



# CITY OF MORGANTON NORTH CAROLINA

July 6, 2016

Dear Contractor,

Please find the "South Sterling Street Storm Drain Relocation – Re-Bid" Project contract documents.

The City Manager and the City Council have asked that this project be re-bid. The original bids came in over budget and there was limited response in terms of number of bids received originally. The project duration has also been extended hopefully allowing more contractors to possibly see this fit into their construction schedules, an issue cited by several contractors in the original bid. The project involves the construction of approximately 300 linear feet of storm drain line, four custom catch basins and appurtenances. Please review the plans and bid proposal book which provide all of the specific details and information on the project. A vicinity map has been provided for your convenience and reference.

Bids must be received prior to **2:00 P.M. on Thursday July 28, 2016**. The bid proposals may be submitted by either paperless format, e-mail or fax, or by mail, or delivered in person to the City Engineer in the Development and Design Services Department on the second floor of City Hall. Hard-copy submissions should be submitted **sealed** prior to that date at any time during our normal business hours of 8:00 A.M. to 5:00 P.M. Monday thru Friday to the Development and Design Services Department, Attn.: Mark A. Young, City Engineer, 305 East Union Street, Suite A100, Morganton, North Carolina 28655. All bids must be accompanied by one of the forms of bid security listed in the Bid Summation, references of previous similar projects, and the applicable Affidavit A or B of the Disadvantaged Business Enterprise ( DBE / MBE / WBE ) forms included in the bid packet. Failure to include these items with the bid proposal may be deemed as non-responsive. No bids shall be received after the above-stated time.

Three originals of the bid documents shall be delivered to the City by the awarded Contractor for inclusion in and execution of the Contract Documents.

If you plan to bid and did not receive your plans directly from the City of Morganton, please be sure that you are on our bidders list. Otherwise, you may fail to get updates or addenda.

Please feel free to contact me at City Hall at (828) 438-5263 if you have any questions or comments regarding the bid package.

The bid listed on the Proposal Sheet shall remain valid for a period of up to 90 days after the bid submittal deadline listed until Notice to Proceed can be given.

Please review the information and call me at (828) 438-5263 if you have any questions.

Sincerely,



Mark A. Young, P.E.  
City Engineer

City of Morganton  
South Sterling Street Storm Drain Relocation

City Officials

Ronnie Thompson, Mayor  
John Cantrell, Mayor Pro-Tem  
Forrest A. Fleming, Councilman  
Sidney Simmons, Councilman  
-Vacant - Councilman

Sally W. Sandy, City Manager

Prepared by  
City of Morganton  
Mark A. Young, P.E.  
City Engineer

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Notice to Bidders

Bids can be submitted at any time during our normal business hours of 8:00 A. M. to 5:00 P.M. Monday thru Friday to the Development and Design Services Department, at City Hall. All bids to my attention: Mark A. Young, PE, City Engineer. The bid proposals may be submitted by either paperless format, e-mail or fax, or by mail, or delivered in person to the City Engineer in the Development and Design Services Department on the second floor of City Hall. E-mail [myoung@ci.morganton.nc.us](mailto:myoung@ci.morganton.nc.us) , Fax **828-438-5264**, Mail **PO Box 3448 Morganton, NC 28680**, Deliver **305 East Union St., Suite A100 Morganton, NC 28655**

Bids will be received up until **2:00 P.M. on Thursday, July 28, 2016**. No bids shall be received after the above-stated time. Bids must be on standard forms furnished in the contract documents and marked appropriately as “South Sterling Street Storm Drain Relocation”

Contract documents may be examined at the City Hall, Development and Design Services Department, 305 East Union Street, Suite A100, Morganton, NC 28655.

Each bid must be accompanied by a bid security of 5% of the bid amount. Security may be in the form of cash, certified check or cashier’s check made payable to the City of Morganton or a bid bond issued by an insurance company authorized to do business in North Carolina. The deposit shall be retained if the successful bidder fails to execute the contract within (10) days after the award of contract or fails to give satisfactory surety as required herein.

A performance bond of 100% of the contract price shall be required.

A material and labor bond in the amount of 100% of the contract price shall be required.

The bidder shall comply with minority business requirements as outlined in G.S. 143-128 by:

1. Providing the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts or,
2. An affidavit indicating that work will be self-performed.

Failure to comply with these requirements may be grounds for rejection of bid.

If you did not receive the project bid notification directly from the City of Morganton, please be sure that you contact us and ask to be added to our bidders list. Include your business name, contact name, physical address, phone number, fax number and email address when contacting us for inclusion to the bidders list. Otherwise, you may fail to get updates or addenda.

Please direct all questions to Mark A. Young PE. If you use email please use the subject line of “South Sterling Street Storm Drain Relocation” so that your email is reviewed in a timely manner. It would be best to follow up with a phone call to insure receipt of your email or other correspondence. If addenda are made at any time throughout the process, they will be posted on the City website under the project title for review.

The City reserves the right to reject any or all bids or to accept the bid that appears to be in the best interest of the City, or provided by law. No bid may be withdrawn for a period of 90 days after the scheduled bid opening.

Mark A. Young, P.E.  
City Engineer

## **SUMMATION OF DETAILED INFORMATION TO BIDDERS**

<u>Owner:</u>	The owner of the work to be done under these plans and specifications is the City of Morganton, represented by the Mayor, City Council and City Manager.
<u>Project:</u>	South Sterling Street Storm Drain Relocation
<u>Bid Security:</u>	Cash, certified check, or cashier's check in the amount of 5% base bid or an acceptable bid bond in the amount of 5% of base bid in accordance with G.S. 143-129.
<u>Contractor:</u>	The organization or legal representative to which the contract is awarded for the proposed work.
<u>Engineer:</u>	The City Engineer for the City of Morganton or his authorized representative representing the owner.
<u>Insurance Required:</u>	As specified by the contract documents.
<u>Time of Completion:</u>	The total time allowed for this project shall be 120 calendar days from Notice to Proceed.
<u>Liquidated Damages:</u>	\$200 per calendar day.
<u>Instructions to Bidders and General Conditions:</u>	The Instructions to Bidders and General Conditions in the contract documents are the standard PENC documents B-2 (1981 Edition) and B-1 (1985 Edition) respectively. Changes to these standard documents are listed in the Special Conditions section of the contract documents.

## **Contractor Qualifications**

The successful bidder shall have successfully completed projects comparable in scope and nature to this project.

Contractor shall have experience in or show that subcontractor has substantial experience in the following: Storm drain line and utility construction.

References for at least three similar projects shall be submitted with the Contractor's bid or within 24 hours of the bid opening.

The Contractor shall submit a list of all subcontractors at bid time. All subcontractors must be approved by the City of Morganton.



## **INSTRUCTIONS TO BIDDERS**

**CITY OF MORGANTON, NORTH CAROLINA  
DEVELOPMENT AND DESIGN SERVICES DEPARTMENT  
305 E. Union Street, Suite A100  
P.O. Box 3448  
Morganton, NC 28680-3448**

## **INSTRUCTIONS TO BIDDERS**

**For a proposal to be considered, it must be in accordance with the following instructions:**

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

Terms used in these Instructions to Bidders are generally defined in the General Conditions of the Contract Documents. For the convenience of prospective bidders the following information may be helpful:

- a. The words "Proposal" and "Bid" are used interchangeably to refer to the properly signed response to the Advertisement for Bids, which, if accepted by the City, will bind the Bidder to perform the Construction Contract.
- b. "Bid Form" refers to the form provided by the City of Morganton ("City") so that a prospective Bidder can submit its response to the invitation for bid. It is also called the "Form of Proposal". Only the form provided by the City can be used to submit a Bid.
- c. The word "Bidder" means a properly licensed contractor who submits a Bid in accordance with these instructions. If a Bidder's Proposal is accepted by the City, then the Bidder becomes the Contractor and is required to execute the Construction Agreement and undertake construction of the Project.

### **2. PROPOSALS.**

Bids must be submitted on the Bid Form provided by the City. Bid Forms must be completed in ink or by typewriter and all blank spaces for bids, alternates, unit prices or other requested information shall be properly filled in. Prices must be stated in both words and numbers and in case of a conflict, the words will take precedence. Erasures, obvious changes or interlineation may disqualify the Bid. Bids containing confusing or conflicting information may likewise be disqualified.

Photocopied and faxed proposals will only be considered if the original of the Bid Form containing the original signature is delivered to the City by mail, courier or by hand delivery immediately following the bid opening.

Any modifications to the Form of Proposal will disqualify the Bid and cause the Bid to be rejected.

The Bidder shall sign the Form of Proposal as follows:

- a. If the documents are executed by a sole owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
- b. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.

c. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such person shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.

d. If the proposal is made by a joint venture, it shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable.

e. All signatures shall be properly witnessed.

f. If the contractor's license of a bidder is held by a person other than an owner, partner or officer of a firm, then the licensee shall also sign and be a party to the proposal. The title "Licensee" shall appear under his/her signature.

Proposals shall be addressed as indicated in the Advertisement for Bids and shall be delivered, enclosed in an opaque sealed envelope, marked "Proposal" or some similar word and bearing the title of the work, name of the bidder, and the contractor's license number of the bidder. Bidders shall clearly mark on the outside of the bid envelope which contract(s) they are bidding.

For projects bid in the single-prime alternative, the names and license numbers of major subcontractors shall be listed on the proposal form.

It shall be the specific responsibility of the bidder to deliver his bid to the proper official (generally the Development and Design Services Department) at the City of Morganton prior to the announced time for the opening of bids. Later delivery of a bid for any reason, including delayed delivery by the United States Postal Service or courier service, shall disqualify the bid.

Modifications of previously deposited bids will be acceptable only if delivered in writing or by telegram or fax to the place of the bid opening prior to the time for opening bids. Telegraphic and fax modifications must be confirmed in writing within 72 hours of the opening of bids.

Unit prices quoted in the proposal shall include overhead and profit and shall be the full compensation for the contractor's cost involved in the work.

### **3. EXAMINATION OF CONDITIONS**

By submitting a Bid, the Bidder acknowledges that all documents pertaining to the Work, the location, accessibility and general character of the site of the Work and all existing buildings and structures within and adjacent to the site has been carefully examined and the Bidder is satisfied as to the nature of the Work, the condition of the existing buildings and structures, the topographic features of the work area, the character, quality and quantity of the material to be encountered, the character of the equipment, machinery, plans and other facilities needed preliminary to and during the prosecution of all Work,

the general and local conditions, the construction hazards, and all other matters, including, but not limited to, the labor situation which can in any way affect the Work under the Contract, and including all safety measures required by the Occupational Safety and Health Act of 1970, as amended, and all rules and regulations issued pursuant thereto.

In submitting a Proposal, the Bidder acknowledges that the available Plans and Specifications, Drawings and other Contract Documents have been reviewed and that the Project described therein is feasible and the Contractor has the means and ability to undertake and complete all Work. By submitting a Bid, the Bidder accepts all the terms, conditions and stipulations contained in the Contract Documents and the Bidder is prepared to work in cooperation with other contractors performing work on the Project Site.

Reference is made to the Contract Documents for the identification of any surveys and investigative reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the Work which have been relied upon by the Engineer in preparing the Drawings and Specifications. The City will make copies of all such surveys and reports, if any, available to the Bidder upon request.

Each Bidder may, at its own expense, make such additional surveys and investigations as the Bidder may deem necessary in order to prepare its Bid and if awarded the bid, perform the Work. Any onsite investigation shall be done at the convenience of the City; however, any reasonable request for access to the site will be honored by the City.

#### **4. BULLETINS AND ADDENDA**

Any addenda to specifications issued during the time of bidding are to be considered covered in the proposal and in issuing the contract they will become a part thereof. It shall be the bidder's responsibility to ascertain prior to bid time the addenda issued and to see that its bid includes any changes required by the addenda.

All addenda should be acknowledged by the bidder(s) on the Form of Proposal.

**5. INTERPRETATIONS.** Any questions about the meaning or intent of the Drawings and Specifications shall be submitted to the City and/or the Engineer in writing. Replies will be issued by addenda mailed and delivered to all prospective Bidders recorded by the City and/or the Engineer as having received the bidding documents. Questions received by the City less than five (5) days prior to the date for opening of the bids will not be answered. Only questions answered by formal written addenda will be binding on the City. Each Bidder, before submitting its Bid, shall ascertain that the Bidder has received all addenda issued.

## **6. BID SECURITY**

Each proposal shall be accompanied by either (i) a cash deposit; (ii) a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation, or (iii) a bid bond issued by a commercial surety in an amount equal to not less than five percent (5%) of the proposal. The Bid Security will be retained by the City of Morganton as liquidated damages in the event of the failure of the successful bidder to execute the contract within ten (10) days after the award and to give satisfactory surety as required by law (G.S. 143-129).

Bid bond shall be conditioned that the surety will, upon demand, forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract. The City may retain bid securities of any bidder(s) who may have a reasonable chance of award of contract for the full duration of time stated in the Notice to Bidders. Other bid securities may be released sooner, at the discretion of the City. All bid securities (cash or certified checks) shall be returned to the bidders promptly after award of contracts and no later than seven (7) days after expiration of the holding period stated in the Notice to Bidders. A Standard Form of Bid Bond acceptable to the City is included with these instructions.

## **7. RECEIPT OF BIDS**

Bids shall be received in strict accordance with the requirements of the General Statutes of North Carolina. Prior to the opening of any Bids for the Project, Bids may be modified or withdrawn provided any modification of a previously submitted Bid shall be executed by the Bidder in the same manner that the original Bid was executed and submitted. Refer to Section 2 above for additional information.

## **8. OPENING OF BIDS**

Upon opening, all bids shall be read aloud. Once any bid is opened, there shall not be any withdrawal of bids by any bidder and no bids may be returned to any bidder. After the bid opening, a bidder may request that his bid be withdrawn from consideration without forfeiture of his bid security in accordance with the provisions of the North Carolina General Statute 143-129.1; however, no bid may be withdrawn, except under the provisions of General Statute 143-129.1, for a period of thirty days unless otherwise specified. Should the successful bidder default or fail to execute a contract, the contract may be awarded to the next lowest and responsible bidder. The City reserves the unqualified right to reject any and all bids. Reasons for rejection may include, but shall not be limited to, the following:

- a. If the Form of Proposal furnished to the bidder by the City is not used or is altered.
- b. If the bidder fails to insert a price for all bid items, alternate and unit prices requested.
- c. If the bidder adds any provision reserving the right to accept or reject any award, or attempts to condition the bid or impose limitations on the bid.

- d. If there are unauthorized additions or conditional bids, or irregularities of any kind which tend to make the proposal incomplete, indefinite or ambiguous as to its meaning.
- e. If the bidder fails to complete the proposal form where information is requested so that the bid may be properly evaluated by the City.
- f. If the unit prices contained in the bid schedule are unacceptable to the City of Morganton.
- g. If the bidder fails to comply with other instructions stated herein.

## **9. BID EVALUATION**

The award of the contract will be made to the lowest responsible bidder as soon as practical after the bid opening. The City may award on the basis of the base bid and any alternates the City chooses.

Before awarding a contract or in connection with the bidding process, the City may require the apparent low bidder to qualify himself to be a responsible bidder by furnishing any or all of the following data:

- a. The latest financial statement showing assets and liabilities of the company or other information satisfactory to the City.
- b. A listing of completed projects of similar size.
- c. Permanent name and address of place of business.
- d. The number of regular employees of the organization and length of time the organization has been in business under the present name.
- e. The name and home office address of the surety proposed and the name and address of the responsible local claim agent.
- f. The names of members of the firms who hold appropriate trade licenses, together with license numbers.
- g. A listing of other construction contacts involving the bidders default or alleged default.

Failure or refusal to furnish any of the above information, if requested, shall constitute a basis for disqualification of the bidder.

In determining the lowest responsible, responsive bidder, the City shall take into consideration the bidder's compliance with the requirements of G.S. 143-128.2(c); the past performance of the bidder on construction contracts for the City or other public bodies including the State of North Carolina with particular concern given to completion

times, quality of work, cooperation with other contractors, and cooperation with the designer and City. Failure of the low bidder to furnish affidavit and/or documentation as required by G.S. 143-128.2(c) may constitute a basis for disqualification of the bid.

Should the City decide that the apparent low bidder is not the lowest responsible, responsive bidder by virtue of the above information or for other valid reasons, the apparent low bidder will be so notified and his bid security shall be returned to him.

#### **10. PERFORMANCE BOND**

The successful bidder, upon award of contract, shall furnish a performance bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

#### **11. PAYMENT BOND**

The successful bidder, upon award of contract, shall furnish a payment bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

#### **12. PAYMENTS**

Payments to the successful bidders (contractors) will be made on the basis of monthly estimates unless some other progress payment schedule is established. See Article 31, General Conditions.

#### **13. PRE-BID CONFERENCE**

Prior to the date set for receiving bids, the City may arrange and conduct a Pre-Bid Conference for all prospective bidders. The purpose of this conference is to review project requirements and to respond to questions from prospective bidders and their subcontractors or material suppliers related to the intent of bid documents. Attendance by prospective bidders shall be as required by the "Notice to Bidders".

#### **14. SUBSTITUTIONS**

In accordance with the provisions of G.S. 133-3, material, product, or equipment substitutions proposed by the bidders to those specified herein can only be considered during the bidding phase until ten (10) days prior to the receipt of bids when submitted to the Designer with sufficient data to confirm material, product, or equipment equality. Proposed substitutions submitted after this time will be considered only as a potential change order, subject to City approval.

Submittals for proposed substitutions shall include the following information:

- a. Name, address, and telephone number of manufacturer and supplier as appropriate.
- b. Trade name, model or catalog designation.

- c. Product data including performance and test data, reference standards, and technical descriptions of material, product, or equipment. Include color samples and samples of available finishes as appropriate.
- d. Detailed comparison with specified products including performance capabilities, warranties, and test results.
- e. Other pertinent data including data requested by the Designer to confirm product equality.

If a proposed material, product, or equipment substitution is deemed equal by the City to those specified, all bidders of record will be notified by Addendum.

## **15. QUALIFICATION OF BIDDERS AFTER AWARD**

Bidders should be prepared to submit written documentation to demonstrate the Bidder's qualifications for undertaking the Project. If requested by the City, the Bidder shall be required to submit financial data, previous experience, license information and other evidence of authority to conduct business in the State of North Carolina. See Section 9 for additional information concerning qualifications.

**CITY OF MORGANTON  
CONSTRUCTION CONTRACT  
GENERAL CONDITIONS**

**CITY OF MORGANTON, NC**  
**GENERAL CONDITIONS CONSTRUCTION CONTRACT**

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## **GENERAL CONDITIONS**

### **ARTICLE 1 - DEFINITIONS.**

**1.1 Basic Definitions.** Whenever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

#### **1.1.1 City.**

The City of Morganton, North Carolina, a party to the Contract. See also Owner.

#### **1.1.2 Contract.**

It is the entire agreement entered into between the City and the Contractor, and it also includes all of the other documents described in Article 2 as the Contract Documents, including any formal changes to any of those documents by addendum, change order or other written modification. The terms Contract and Contract Documents are synonymous and may be used interchangeably. For purposes of distinguishing documents, the term "Agreement" may be used in place of Contract when referring solely to the separate document signed by the parties.

#### **1.1.3 Contract Amount.**

The Contract Amount is the sum of money stated in the Contract that is payable by the City to the Contractor for the performance of the Work. Normally the Contract Amount is the amount stated in the bid, but it may also include any adjustments authorized by change order or other written modification. Sometimes it is referred to as the contractor's fee or the contract sum and it is generally paid to the Contractor in monthly or periodic progress payments, based on the portion of the Work satisfactorily completed, less any retainage.

#### **1.1.4 Contract Time.**

The number of calendar days allowed for completion of the Work, as stated in the Agreement or other Contract Documents.

### **1.1.5 Contractor.**

The Contractor is the Person entering into the Contract with the City to perform all of the Work required under the Contract Documents. For some projects, more than one Contractor may have a subdivision or branch of the Work requiring a separate contract (i.e. projects involving multiple prime contracts). Where a particular contractor is intended, an adjective may be used to help further define which contractor, such as “general” contractor, “single prime” contractor or “heating” contractor in order to help identify the contractor required to perform all or any specific branch or subdivision of the Work assigned to that contractor. However, the term does not include a “subcontractor” which is meant to be a Person who has entered into a direct contract with a contractor but not the City.

### **1.1.6 Drawings.**

The Drawings are the graphic or pictorial portions of the Contract Documents showing the design, the location and the dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams and other visual representations of the Work.

### **1.1.7 Engineer.**

The Person engaged by the City to perform architectural, engineering, design and other related services (but not construction) related to the Project and the Work required to complete the Project. When the City uses an architect for such services, the terms “architect” and “engineer” shall be synonymous. The Engineer may be an independent contractor providing professional services to the City; however, for some projects, the architectural, engineering, design, inspection, testing and other services related to the Project may be provided by a staff person or a department of the City.

### **1.1.8 Owner.**

For this Contract, the term Owner is synonymous with the City.

### **1.1.9 Person.**

The term Person includes an individual, a partnership, corporation or other entity regardless of its organizational structure. Most often, it refers to the Contractor or to the Engineer and depending on its usage, may refer to the individual who is designated to or has apparent authority to act on behalf of the Contractor or the Engineer or the City.

#### **1.1.10 Plans and Specifications.**

A term sometimes used to refer to the Drawings and the Specifications together or to the set of documents which describes the Work and which may include floor plans, elevations, renderings, plats, details of mechanical systems or other pictorial or written descriptions of the Work.

#### **1.1.11 Project.**

The entire construction Project involving the Work provided for in whole or in part by the Contract Documents. It is the intended result of the Work.

#### **1.1.12 Project Expediter.**

The Project Expediter is a responsible, reliable Person appointed by the City under G.S. 143-128(e) for the purpose of expediting the Work on the Project. Not all projects will have a Project Expediter. Unless a specific Project Expediter is appointed by the City, the single prime Contractor or the general Contractor will have the responsibility for coordinating the Work and preparing any schedule of how or when the Work will be completed.

#### **1.1.13 Specifications.**

The written description of the technical requirements for construction such as the written requirements for materials, equipment, systems, standards and workmanship for the Work and the performance of related services.

#### **1.1.14 Supplemental Conditions.**

Those additional or special conditions, when included as a part of the Contract Documents, which contain changes, deletions and additions to the general conditions or clarify the scope of the Work for the particular project. Also called Special Conditions.

#### **1.1.15 Work.**

The term Work means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services (including documentation) required to be provided or necessary to be furnished by the Contractor in order to fulfill its obligations under the Contract.

**1.2 Other Definitions.** As required, other words and phrases may be defined when used throughout the Contract Documents as those words and/or phrases are used.

**1.3 Technical Words.** Unless defined, words or phrases having an accepted or recognized technical or construction industry meaning are used throughout the Contract Documents in accordance with those meanings. Likewise, abbreviations shall refer to the technical society, organization, body, code, rules, or standards, generally ascribed to such abbreviation by the building and construction trades.

**1.4 Pronouns.** The pronouns he, she and it, or his, her and their, are used interchangeably to refer to the Contractor, the Engineer or some other person.

## **ARTICLE 2 – CONTRACT DOCUMENTS AND REQUIREMENTS.**

**2.1 Meaning and Intent.** The Contract Documents form the entire Contract for the construction of the Project and the satisfactory completion of all Work required from the Contractor. The Contract Documents include the Advertisement for Bids and any addenda, the Instruction to Bidders, the completed Bid, the Award of Contract, the Agreement (the specific Contract document signed by the parties), the General Conditions, the Supplemental Conditions, if any, the Drawings, the Specifications, and all addenda thereto, all required bonds and insurance certificates as well as all formal changes to any of those documents by addendum, properly issued change order or by other modification in writing.

Any reference to the term “Contract” includes all of the Contract Documents.

The Contract Documents are complementary, each to the other, and any requirement contained in one document is as binding as if it were contained in another or all of the other documents.

The intent of the Contract Documents is to describe and provide for a functionally complete and operational Project to be constructed in accordance with the Contract Documents.

**2.2 Conflicts.** In the event there is a discrepancy in a document or an ambiguity or conflict between documents and such discrepancy, ambiguity or conflict cannot be resolved by reference to all of the documents, the following order of precedence shall apply in reconciling the discrepancy, ambiguity or conflict (listed in order of highest to lowest precedence):

1. Written modifications in inverse chronological order,

2. Properly issued change orders,
3. Supplemental Conditions, if any,
4. The General Conditions,
5. Written amendments or addenda to Drawings and Specifications,
6. The Drawings and the Specifications (Plans and Specifications),
7. The Agreement,
8. Advertisement for Bids and any written addenda thereto,
9. The Bid.

Further, figure dimensions on Drawings govern over scale dimensions and detailed Drawings shall govern over general Drawings. When there is a conflict between existing Project site conditions and information contained on the Drawings or the Specifications, the existing Project site conditions shall govern and the Contractor shall perform the Work and adjust to the existing conditions at no additional cost to the City provided the Contractor could or should have known of such conditions based upon its reasonable investigation of the Project site prior to submitting its Bid in accordance with the Instruction to Bidders.

**2.3 Execution of Contract Documents.** The Contractor shall see that the Agreement and any other Contract Document requiring its signature, is properly executed by an officer having the authority to legally bind the Contractor. Where appropriate, the officer's signature shall be attested to or witnessed and the corporate seal, if any, affixed thereto, although the failure to have a signature witnessed or the seal attached shall not affect the validity of the document. If the Contractor is transacting business under a trade name, then the full legal name and type of entity (sole proprietorship, partnership, corporation, etc.) shall be disclosed and set out on the signature page of the Agreement as well as on the bonds and insurance required by the Contract Documents. If the contractor's license is held by a person other than the owner, partner or officer of the Contractor, then the licensee shall also sign as a party to the Contract and the title "licensee" shall appear under his or her signature.

By executing the Agreement, the Contractor certifies that (i) it has examined the conditions pertaining to the Work as required in Section 3 of the Instructions to Bidder, (ii) it has made diligent inquiry and understands the relationship and role of the various contractors, engineers, inspectors and representatives appointed by the City, if any, and the other persons involved in the Project, (iii) it has made

inquiry about and fully understands the extent and limits of any branch or subdivision of the Work to complete the Project that will be awarded to other contractors, if the Contract is separate or multiple prime contract [see G.S. 143-238(b)] or any portion of the Work that will be retained or completed by the City by its own forces, (iv) the Contractor has given full consideration to the completion date (Contract Time) and the time of performance, (v) the Contractor has the skill, experience, training and ability to complete the Work under the Contract Documents for the Contract Amount and by the Contract Time, and (vi) that it has secured all approvals, corporate resolutions or other actions necessary in order to sign and be bound by the Agreement.

**2.4 Review of Contract Documents and Site Conditions.** The Contract Documents are not complete in every detail, but show the purpose and intent only and the Contractor shall comply with their true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy or ambiguity which appears in the Contract Documents, instructions given by the Engineer or the work performed by others.

In such cases where the Contract Documents, the site conditions or the nature of the Work requires clarification, the Contractor shall request written clarification from or by the Engineer or an interpretation of the documents before proceeding with the Work. The Engineer shall promptly provide the Contractor with any requested instructions, interpretation or more detailed Drawings and Specifications so that the Contractor may proceed with its Work in a timely manner.

**2.5 Copies of Drawings and Specifications.** The Engineer shall furnish the Contractor, free of charge, a sufficient number of copies of the Plans and Specifications to complete its Work. Unless otherwise required by the nature of the Project, the Engineer shall:

**2.5.1 General Contractor.** Provide the General Contractor (or single prime contractor) with not less than four (4) full sets of Drawings and Specifications. Each set of Drawings and Specifications shall include the Drawings and Specifications of all other Contracts issued in connection with the Project.

The General Contractor shall also be provided with a suitable set of Drawings upon which the Contractor will clearly and legibly record all work-in-place that is at variance with the Contract Documents or other changes made during the construction process. The Drawings marked to show such changes shall be kept at the Project Site for review by the Engineer and/or the City.

**2.5.2 Other Contractors.** Provide other contractors furnishing Work at the Project with not less than three (3) sets of Drawings and Specifications one of which shall be used to clearly and legibly record all work-in-place that is at variance with the Contract Documents and be made available upon request to the Engineer and/or the City.

Additional sets of Contract Documents shall be furnished at cost, including mailing, to any contractor requesting additional sets of Contract Documents. The cost of additional sets of Plans and Specifications shall be the same as stated in the bidding documents.

## **2.6 Shop Drawings, Samples and Product Information.**

Shop drawings are intended to be drawings, diagrams, prints, schedules and other data that is prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor to illustrate a portion of the Work.

Product data sheets are illustrations, standard schedules, charts, instructions, brochures, diagrams and other information provided by the Contractor for the purpose of illustrating materials and equipment to be installed or other supplies to be provided as a part of the Work.

Samples are examples which generally illustrate materials that will be used as a part of the Work or samples of equipment and/or workmanship used to demonstrate the standards by which the Work will be judged.

When the Special Conditions require or for those projects that are sufficiently complex to require shop drawings, the Engineer and the Contractor shall jointly establish a schedule of shop drawings to be prepared by the Contractor. The schedule as to when shop drawings are due will be made a part of the Construction schedule. After checking and verifying all field measurements and reviewing the Drawings, the Contractor will submit to the Engineer for review, at least four (4) copies of all shop drawings which shall have been checked by and stamped with the approval of the Contractor and identified as the Engineer may require. The data shown on the shop drawings will be complete with respect to dimensions, design criteria, materials of construction and other information in order for the Engineer to complete his review.

The Contractor will also submit to the Engineer for review in a timely manner so as to cause no delay in the Work, all samples, required by the Contract Documents. All samples will likewise be checked by and stamped with the approval of the Contractor and identified clearly as to material, manufacturer, any pertinent catalogue numbers and the use for which the sample is intended.

In making such submissions, the Contractor will call the Engineer's attention to any deviations that the shop drawings or samples may have from the requirements of the various Contract Documents, especially those shop drawings and samples at variance with the Drawings or Specifications.

The Engineer will review the submissions with reasonable promptness for conformance with the design concept of the Project and for compliance with the information provided by the Contract Documents. The Contractor will make any corrections required by the Engineer and then provide the Engineer with corrected copies of all shop drawings and new samples and this process will be repeated until the review is satisfactory to the Engineer and final copies are approved.

No work requiring a shop drawing or sample submission shall be commenced by the Contractor until the submission has been reviewed and approved by the Engineer.

The Engineer's review of shop drawings and/or samples shall not relieve the Contractor from its responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to such deviation at the time of the submission and the Engineer has given written approval (generally in the form of a change order) to the specific deviation, nor shall the review and approval by the Engineer relieve the Contractor from its responsibility for errors and omissions in the shop drawings and/or samples provided.

Shop drawings, samples and product data sheets are not part of the Plans and Specifications nor are they considered as a Contract Document.

**2.7 Ownership of the Plans and Specifications.** The drawings, specifications and other design documents, including those in electronic format prepared by the Engineer are instruments of service and neither the Contractor nor any subcontractor or other person acting on behalf of the Contractor shall have any claim or ownership of such Drawings, Specifications or other instruments of service. If those instruments of service are prepared by the City or any of its employees and departments, the ownership and rights to those documents shall be retained by the City. If the instruments of service are prepared by an architect or other independent consultant employed by the City, then the ownership and rights to those documents shall be subject to the separate agreement between the City and such architect, engineer or consultant. The Contractor may retain a record set of the instruments of service for its own purposes, but the record set of instruments shall not be used by the Contractor on any other project or for additions to this Project outside the scope of the Work without the specific written consent of the City and/or the Engineer.

## **ARTICLE 3 – PRELIMINARY MATTERS.**

**3.1 Delivery of Agreement, Bonds, Insurance, etc.:** Within ten (10) calendar days after written notification of the Award of Contract, the Contractor shall deliver to the City, the signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of the Contract.

**3.2 Preconstruction Conference.** If the Engineer and/or the City shall schedule a preconstruction conference (not to be confused with any prebid conference), all Contractors and/or major subcontractors shall attend the conference if required. The preconstruction conference may be scheduled at any time after the Award of Contract, but before the commencement of construction. The Engineer shall prepare minutes or a summary of the results of the conference.

At the preconstruction conference, the Engineer shall review the scope of the project and shall be prepared to provide instructions or directions concerning the construction schedule, the progress schedule, the procedure and schedule for handling shop drawings, samples and product information and establish procedures as to how the Contractor may make required submissions to the Engineer, may request interpretations and secure other necessary binding instructions from the City so that the Work will not be unnecessarily delayed. The procedures for issuing change orders and/or securing modifications to the Contract Documents shall be explained. At the preconstruction conference, the Engineer shall identify all representatives of the City involved in the project and the processing of payment applications will be discussed.

The Contractor, if it has not already done so, will be afforded an opportunity to raise questions concerning site conditions and make inquiry about the availability of geotechnical surveys, topographic maps, environmental studies and surveys and other reports and information if such information is available that will benefit the Contractor in performing the Work or if such information was used by the Engineer to prepare the Drawings and Specifications.

**3.3 Commencement of Contract Times; Notice to Proceed:** The Contract Time(s) including any completion date (whether specifically stated or determined by computation) will begin to run on the day indicated in the Notice to Proceed. Notice to Proceed will be given at any time within thirty (30) calendar days after the executed Agreement is delivered to the Contractor.

### **3.4 Before Starting Construction:**

**3.4.1** No Work shall be done at the site prior to the preconstruction conference, if one is scheduled, without the Engineer's approval. Early entry to the site for mobilization, staging and other preparation work

may be granted by the Engineer at any time after the Award of the Contract, but such work is at the expense and risk of the Contractor. Before undertaking each part of the Work, the Contractor shall carefully study the Contract Documents to check and verify that the pertinent figures shown thereon compare accurately to all applicable field measurements. Contractor shall promptly report in writing to the 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. The Contractor shall be liable to the City for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

**3.4.2** The successful completion of the Work within the Contract Time is of primary importance. Therefore, the Contractor shall submit to the Engineer for review and approval, or acceptance, as appropriate, a Construction Schedule, no later than thirty (30) days after the preconstruction conference, if one is held, or as otherwise required by the Engineer.

The Construction Schedule must indicate the times (number of days or dates) for starting and completing the various stages of the Work, including any milestones specified in the Contract Documents, and must contain sufficient detail to indicate that the Contractor has properly identified required Work elements and tasks; has provided for a sufficient and proper workforce and integration of subcontractors; has provided sufficient resources; and, has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract Time. The times for submitting shop drawings, samples and product data sheets will be included unless set out on a separate schedule.

**3.4.3 Other Information.** Unless the Contractor and the Engineer shall mutually agree to a different time schedule as recorded in the minutes of the preconstruction conference, not later than the commencement of construction, the Contractor will provide the Engineer with the name, address and contact information (mailing address, telephone number, cell phone number, and an emergency or after hours telephone number) for the Superintendent assigned to the Project by the Contractor, the Safety Officer, if one is required by the Engineer, and if different from the Superintendent, as well as a list of all subcontractors.

The Contractor will not employ any subcontractor or any other person or organization, either initially or as a substitute, against whom the City or the Engineer may have reasonable objection nor will the Contractor be required to employ any subcontractor, consultant or other person or organization against whom the Contractor shall have reasonable objection.

#### **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS.**

**4.1 Availability of Lands.** The City will make the site of the Project available to the Contractor and will provide access to all land and interests in land required for the Work and will, through the Engineer, notify the Contractor of any restrictions on such access. The Contractor must obtain any additional temporary construction facilities, stockpiling, staging or storage sites not otherwise provided or available on the Project site.

#### **4.2 Subsurface and Physical Conditions:**

**4.2.1** The Contractor specifically represents that it has carefully examined the Plans and Specifications, the geotechnical report, if any, and the site of the proposed Work (reference is made to Instruction to Bidders) and is thoroughly familiar with all of the conditions surrounding construction of the Project, having had the opportunity to conduct any and all additional inquiry, tests and investigation that the Contractor deems necessary and proper. The Contractor acknowledges the receipt of the geotechnical report, if any, and agrees that the report, while it is an accurate record of the geotechnical conditions at the boring locations, is not a guarantee of specific site conditions which may vary between boring locations.

**4.2.2** The Contractor shall notify The City in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are: (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions of an unusual nature, that differs materially from those normally encountered in the type of work being performed under this Contract. The Contractor may not disturb the conditions until the Engineer conducts an investigation. The Engineer will promptly investigate such conditions. If it is determined that such conditions differ materially and cause an increase or decrease in the Contractor's cost of or time required for performance of any part of the Work, the Engineer will recommend an equitable adjustment in the

Contract Amount or Contract Time, or both. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, the Engineer will notify the Contractor in writing of such findings and the Contract will not be adjusted.

**4.2.3** Notwithstanding any other provision of this Contract, the Contractor is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. "Public utility lines" means the utility distribution and supply system, and "utility customer service lines" means the utility lines connecting customers to the utility distribution and collection system. Generally, existing utility customer service line connections are not shown on the Drawings. The Contractor shall notify "One Call" (or other similar service) and exercise due care to locate, mark, uncover and otherwise protect all such lines in the construction zone and any of the Contractor's work or storage areas. The Contractor's responsibility for the location and protection of utilities is primary and nondelegable. **The Contractor shall indemnify or reimburse such expenses or costs (including fines that may be levied against the City) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area.** The City reserves the right to repair any damage the Contractor causes to such utilities at the Contractor's expense. If a public line and/or customer service line is damaged by the Contractor, the Contractor shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to the Engineer and likewise promptly notify the owner of any public utility line that is damaged. The coordination and expense of the relocation of all public utility lines (except for those owned by the City) and all utility customer service lines, either temporary or permanent, is the responsibility of the Contractor unless the City has agreed otherwise .

**4.2.4** The Contractor shall take reasonable precaution to avoid disturbing graves, primitive records, artifacts and antiquities of archaeological, paleontological, cultural or historical significance. No objects of this nature shall be disturbed without written permission of the City and the appropriate agency of the State of North Carolina (Office of State Archaeology) . When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the Engineer and all appropriate North Carolina Agencies of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive records and antiquities uncovered on the City's property shall remain the property of the City and/or the State of North Carolina. If it is

determined by the City, in consultation with the State of North Carolina that exploration or excavation of primitive records or antiquities on the Project site is necessary to avoid loss, the Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time will be equitably adjusted.

**4.3 Reference Points.** Unless otherwise specified, all control lines and bench marks suitable for use in the layout of the Work will be furnished by City. The City shall furnish the Contractor with any engineering surveys of the site of the project describing the property boundaries, utility lines and other physical characteristics of the property. Controls, bench marks and property boundary markers shall be carefully preserved by the Contractor by use of flags, staffs or other visible devices and in case of destruction or removal by the Contractor or its employees, such controls and bench marks shall be replaced by a Registered Professional Land Surveyor at the Contractor's expense. Any survey monuments damaged by Contractor will be reestablished by the City at the Contractor's expense.

**4.4 Hazardous Materials.** The Contractor shall comply with all federal and state laws, rules, orders and directives concerning possession, use and disposal of any hazardous substances or materials, hazardous waste, toxic pollutants or other dangerous substances (collectively called "hazardous materials) as defined by the United States Environmental Protection Agency (EPA) and/or the North Carolina Department of Environment Management (NCDEM) or any of their respective divisions or by any federal or state law. All activities carried on by the Contractor on the Project Site shall be in full compliance with the rules and regulations issued by any federal and/or state agency regarding discharges, releases, emissions, spills, and the containment or clean up of any pollutant, hazardous material or substance adversely affecting the environment or in any way regulated by the EPA, NCDEM or any other state or federal agency.

**4.4.1** To the extent provided by any applicable law, the City shall be responsible for any hazardous material uncovered or revealed at the site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. The Contractor shall immediately notify the Engineer of any suspected hazardous materials encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.

**4.4.2** The Contractor shall be responsible for any hazardous materials brought to the site by the Contractor, subcontractor, suppliers or anyone else for whom the Contractor is responsible.

**4.4.3** No asbestos-containing materials shall be incorporated into the Work or brought on Project site without prior approval of the City. The Contractor shall not knowingly use, specify, request or approve for use any asbestos containing materials or lead-based paint without the City's written approval. When a specific product is specified, the Contractor shall endeavor to verify that the product does not include asbestos containing material.

**4.4.4** Unless otherwise expressly provided in the Contract Documents to be part of the Work, the Contractor is not responsible for any hazardous materials and/or conditions uncovered or revealed at the site which was not shown or indicated on the Drawings or identified as part of the Work. Upon encountering any hazardous conditions, the Contractor must stop Work immediately in the affected area, isolate or temporarily contain such condition and duly notify the Engineer and/or the City. If required by applicable law or regulations, any government agency or quasi-government entities with jurisdiction over the Project site or over the hazardous conditions or materials shall be notified.

Upon receiving notice of the presence of suspected hazardous materials or conditions, the City shall take the necessary measures required to ensure that the hazardous materials are remediated or rendered harmless. Such necessary measures shall include the City retaining qualified independent experts to (i) ascertain whether hazardous materials have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that the City must take either to remove the hazardous materials or render the hazardous materials harmless.

The Contractor shall be obligated to resume Work at the affected area of the Project only after the Engineer provides written certification that (i) the hazardous materials have been removed or rendered harmless, and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or site. The Contractor shall be responsible for continuing the Work in the unaffected portion of the Project and site.

Notwithstanding the preceding provisions of this Section 4.1, the City is not responsible for hazardous materials or conditions created by or brought to the site by the Contractor, subcontractors or anyone for whose acts they may be liable. **The Contractor shall indemnify, defend and hold harmless the City and the City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous materials and conditions introduced or caused to the site by the Contractor, subcontractors or anyone for whose acts they may be liable.**

**4.4.5** The Contractor shall be responsible for use, storage and remediation of any hazardous materials or conditions brought to the site by the Contractor, subcontractors, suppliers or anyone else for whom the Contractor is responsible.

## **ARTICLE 5 – BONDS AND INSURANCE.**

**5.1 Bonds.** Unless the Contractor chooses to make a deposit of money, certified checks or government securities for the full amount of the Contract in order to secure the faithful performance of the terms of the Contract Documents in the manner permitted by G.S. 143-129(c), the Contractor shall furnish the City with a performance bond and a separate payment bond in an amount equal to 100% of the Contract Amount as security for the faithful performance and/or the payment of all of the Contractor's obligations under the Contract Documents. In the event the Contract Amount is increased by written modification or change order, the City may require that additional performance and/or payment bonds be issued in the adjusted Contract Amount.

The bonds shall conform to the requirements of Article 3 of Chapter 44A of the General Statutes of North Carolina and shall be provided by a solvent surety or insurance company licensed by the State of North Carolina and authorized to issue bonds in the amount required by the Contract Documents. Original performance and payment bonds properly executed and issued by the Contractor and the surety shall be provided by the Contractor as required by Section 3.1 above, but before the commencement of any construction whatsoever. Any bond signed or issued by an agent must be accompanied by a certified copy of such agent's authority to act on behalf of the surety (i.e., the power of attorney).

If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or otherwise has its right to do business in the State of North Carolina terminated, the Contractor shall, within ten (10) days thereafter, substitute another bond or surety which must be acceptable to the City.

All bonds shall remain in effect for at least one (1) year after the date of last payment under the Contract Documents or until such bond is released by the City.

**5.2 Insurance.** The Contractor shall procure and maintain in full force and effect for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, or by the agents, representatives, employees and subcontractors (of any tier).

The Contractor shall maintain insurance limits no less than:

1. General liability: (including operations, products and completed operations)

A combined single limit coverage of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal property and property damage shall be maintained. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be not less than two million dollars (\$2,000,000).

2. Automobile liability:

One million dollars (\$1,000,000) per accident for bodily injury and property damage shall be maintained.

3. Worker's Compensation and employer's liability:

Worker's Compensation Insurance shall be maintained in the amount and as required by the law of North Carolina with employer's liability of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) per accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate policy limit and disease coverage for each employee in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000) unless the law of the State of North Carolina requires more coverage.

4. Course of construction:

The Contractor shall purchase and maintain property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Amount, plus the value of subsequent contract modifications and change orders on a replacement cost basis without optional deductibles. Builder's risk insurance shall be maintained by the Contractor until such time as the Contractor no longer has an insurable interest in the property.

The deductibles or self-insurance retentions must be declared and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claims, administration and defense expenses in the event the Contractor is self-insured.

The general liability and automobile liability policies shall contain, or be endorsed to contain the following provisions:

1. The City and its officers and employees shall be covered as insureds with respect to liability arising out of the Work or operations performed by or on behalf of a contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance or as a separate owner's and contractor's protective liability policy.

2. For all claims related to this project, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the City, its officers, officials and employees shall be in excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this section shall be endorsed to provide that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

The Builder's risk insurance policy shall contain provisions naming the City as the loss payee and all rights of subrogation against the City shall be waived.

Insurance shall be placed with insurers with a current A.M. Best's rating of not less than (a) vii or otherwise acceptable to the City.

In the event any of the policies provided by the Contractor provide claims-made coverage, the coverage shall remain in effect for a period of not less than five (5) years after the completion of the Contract or the applicable statute of limitations, whichever occurs first.

The Contractor shall furnish the City with original certificates and amendatory endorsements providing the coverages required by this section. All certificates, endorsements and policies required by this section shall be provided prior to the commencement of Work; however, the failure to obtain any required evidence of insurance shall not waive the Contractor's obligation to provide them.

The Contractor shall require and verify that all subcontractors (of any tier) maintain insurance of the type, limits and conditions set out above.

**5.3 Indemnification.** The Contractor shall indemnify, save harmless and defend the City, its agents, servants and employees and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney fees, for on account of any injury to any person or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the Work covered by this Contract, except to the extent that such loss results from the sole negligent act of the City or that indemnification is prohibited by the law of North Carolina.

**5.4 City's Insurance.** The City, at its own expense, shall provide and pay for the City's standard and/or customary property and liability insurance on the Project site.

## **ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES.**

### **6.1 Supervision and Superintendence:**

**6.1.1** The 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. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

**6.1.2** The Contractor shall have an English-speaking, competent superintendent on the site of the Work at all times that work is in progress. The superintendent will be the Contractor’s representative on the Work and shall have the authority to act on the behalf of and bind the Contractor.

All communications given to the Superintendent shall be as binding as if given to the Contractor. Either the Contractor or the superintendent shall provide a cellular telephone number and an emergency and home telephone number at which one or the other may be reached if necessary when work is not in progress. The superintendent must be an employee of the Contractor, unless such requirement is waived in writing by the Engineer. If the Contractor proposes a management structure with a project manager (or some similarly named person) supervising, directing, and managing construction of the Work in addition to or in substitution of a superintendent, the requirements of these Construction Documents with respect to the superintendent shall likewise apply to any such project manager.

### **6.2 Labor, Materials and Equipment.**

**6.2.1** The Contractor shall maintain a work force adequate to accomplish the Work within the Contract Time. The Contractor agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. The Contractor and its subcontractors, as well as their employees may not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on the City’s property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. Subject to the applicable provisions of North Carolina law, the

Contractor, subcontractors, sub-subcontractors, and their employees may not use or possess any firearms or other weapons while on the job or on the City's property. If the Engineer notifies the Contractor that any worker or representative of the Contractor is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of North Carolina law, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker or representative, including an officer or owner of the Contractor, from performing Contract Work, and may not employ such worker or representative again on the project without the City's prior written consent. The Contractor shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project.

**6.2.2** The Contractor shall provide and pay for all 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 furnishing, performance testing, start-up and completion of the Work including corrections to the Work, punch list items and any warranty work.

**6.2.3** All materials and equipment shall be of good quality and new (including new products made of recycled materials), except as otherwise provided in the Contract Documents. If required by the Engineer, the Contractor shall, at its own expense, furnish satisfactory evidence (reports of required tests, manufacturer's certificates or compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract Documents.

**6.2.4 Substitutes and "Approved Equal" Items:**

1. Substitutions. 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 and quality required. Unless the specification

or description contains words reading that no like, equivalent or “approved equal” item or no substitution is permitted, other items of material or equipment of other suppliers may be submitted by the Contractor, at the Contractor’s sole risk.

**2. “Approved Equal”.** If in the Engineer’s sole discretion an item of material or equipment proposed by the Contractor is functionally equal to that named and specifically similar so that no change in related Work will be required, it may be considered by the Engineer as an “approved equal” item, in which case review of the proposed item may, in the Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. The Contractor shall provide the Engineer with the documentation required for the Engineer to make its determination.

**3. Substitute Items.** If in the Engineer’s sole discretion an item of material or equipment proposed by the Contractor does not qualify as an “approved equal” item, it will be considered a proposed substitute item. The Contractor shall submit sufficient information as provided in the Contract Documents to allow the Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefore.

**4. Substitute Construction Methods and Procedures.** If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may, at Contractor’s sole expense and risk, including disruptions to the progress schedule, with prior approval of the Engineer, furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. The Contractor shall submit sufficient information to the Engineer to allow the Engineer, in the Engineer’s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents.

**5. Engineer’s Evaluation.** The Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to section 6.2.4. The Engineer will be the sole judge of acceptability. No “approved equal”

or substitute shall be ordered, installed, or utilized until the Engineer's review is complete, which will be evidenced by either a Change Order or completion of the Shop Drawing review procedure. The City may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute or for any other delay or disruption to the progress schedule of the Project Schedule attributable to any such substitution. The City shall not be responsible for any delay due to review time for any "approved equal" or substitute.

6. Contractor's Expense. All data and documentation to be provided by the Contractor in support of any proposed "approved equal" or substitute item will be at the Contractor's expense.

The approval of the Engineer will not relieve the Contractor from primary responsibility and liability for the suitability and performance of any proposed substitute item, method or procedure and will not relieve the Contractor from its primary responsibility and liability for curing defective Work and performing warranty work, which the Contractor shall cure and perform, regardless of any claim the Contractor may choose to advance against the Engineer or manufacturer.

**6.3 Progress Schedule.** Unless otherwise provided, the Contractor shall adhere to the Construction Schedule established in accordance with Paragraph 3.3.2 as it may be adjusted from time to time as provided below. As required by the Engineer, the Contractor shall also maintain throughout the Contract Time a progress schedule which shall record the actual progress of all Work, the completion date for each phase or subsection of the Work and any deviations or discrepancies between the actual progress of the Work and the Construction Schedule. All information set out on the progress schedule shall be accurate and subject to review by the Engineer.

**6.3.1** The Contractor shall submit to the Engineer for review and approval on a monthly basis any proposed adjustments in the Construction Schedule that will not change the Contract Times or milestones. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Construction Schedule. The Contractor's progress schedule must show how the Contractor will consistently advance the progress of the Work in accordance with the Construction Schedule. Such adjustments will conform generally to the Construction Schedule then in effect.

**6.3.2** Proposed adjustments in the Construction Schedule that will change the Contract Times or milestones shall be submitted in accordance with the requirements of Article 12. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the progress schedule. Such adjustments may only be made by a Change Order or Time Extension Request in accordance with Article 12.

#### **6.4 Concerning Subcontractors, Suppliers and Others:**

**6.4.1 Assignment.** The Contractor shall retain direct control of and give direct attention to fulfillment of this Contract. The Contractor shall not, by Power of Attorney, or otherwise, assign the Contract without the prior written consent of the City. In addition, without the City's written consent, the Contractor will not subcontract the performance of the entire Work or the supervision and direction of the Work nor will the Contractor bid the Project and/or agree to the Work either directly or indirectly for an unlicensed contractor.

**6.4.2 Award of Subcontracts for Portions of the Work:** The Contractor shall not employ any subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom the City may have reasonable objection. The City will communicate such objections by written notice. If the City requires a change without good cause of any subcontractor, person or organization previously accepted by the City, the Contract Amount shall be increased or decreased by the difference in the cost occasioned by any such change, and the appropriate Change Order shall be issued. The Contractor shall not substitute any subcontractor, person or organization that has been accepted by the City, unless the substitute has been accepted in writing by the City. No acceptance by the City of any subcontractor, supplier or other person or organization shall constitute a waiver of any right of the City to reject defective work.

**6.4.3** The Contractor shall enter into written agreements with all subcontractors and suppliers which specifically binds the subcontractors or suppliers to the applicable terms and conditions of the Contract Documents for the benefit of the City and the Engineer. The City reserves the right to specify that certain requirements shall be adhered to by all subcontractors as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreement between the Contractor and subcontractor or supplier.

**6.4.4** The Contractor shall be fully responsible to the City for all acts and omissions of the subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor just as the Contractor is responsible for the Contractor's own acts or omissions. Nothing in the Contract Documents shall create for the benefit of any such subcontractor, supplier or other person or organization any contractual relationship between the City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of the City or the Engineer to pay or to see to the payment of any monies due any such subcontractor, supplier or other person or organization except as may otherwise be required by laws.

**6.4.5** The Contractor shall be solely responsible for efficiently scheduling and coordinating the Work of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor in order to avoid any delays or inefficiencies in the prosecution of the Work. The Contractor shall require all subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the Engineer through the Contractor unless the Engineer and Contractor agree otherwise.

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

**6.4.7** The Contractor shall promptly pay each subcontractor and supplier their appropriate share of payments made to the Contractor.

**6.4.8** To the extent allowed by North Carolina law, the City shall be deemed to be a third party beneficiary to each subcontract and may, but only if the City elects, following a termination of the Contractor, require that the subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of the City, rather than the Contractor; however, if the City requires any such performance by a subcontractor for the City's direct benefit, then the City shall be bound and obligated to pay such subcontractor the reasonable value for all Work performed by such subcontractor to the date of the termination of the Contractor, less previous payments, and for all Work performed thereafter. In the event that the City elects to invoke its right under this section, the City will provide notice of such election to the Contractor and the affected subcontractor(s).

## **6.5 Patent Fees and Royalties:**

**6.5.1** The Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or other formulation or presentation of its Bid.

**6.5.2** The Contractor shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by the City.

**6.5.3** The Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save the City harmless from any loss or liability, direct or indirect, arising with respect to Contractor's process in the formulation of its Bid or the performance of the Work or otherwise arising in connection therewith. The City reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event the Contractor shall indemnify and save harmless the City from all costs and expenses of such defense as well as satisfaction of all judgments entered against the City.

**6.5.4** The City shall have the right to stop the Work and/or terminate this Agreement at any time in the event the Contractor fails to disclose to the City that the Contractor's work methodology includes the use of any infringing design, device, material or process.

**6.6 Permits, Fees.** Unless otherwise agreed to in writing, the Contractor shall obtain and pay for all construction permits, licenses and fees required for performance of the Work including any permits, licenses and fees normally charged by the City.

## **6.7 Laws and Regulations.**

**6.7.1** The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body including departments and agencies

of the City, having jurisdiction over the Work or any part thereof. Except where otherwise expressly required by applicable laws and regulations, neither the City nor the Engineer shall be responsible for monitoring the Contractor's compliance with any laws and regulations. The Contractor should not assume that permits and approvals by the Inspection and/or the Planning Departments of the City or any other board or agency of the City will be issued except in accordance with standard procedures and as permitted by law or ordinance.

**6.7.2** Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. The Contractor shall plan and execute all land disturbing activity in compliance with the Sedimentation Pollution Control Act of 1973 and all applicable Federal, State and local laws and regulations concerning control and abatement of water pollution and prevention and control of air pollution and the control of surface or storm water runoff.

**6.7.3** If the Contractor performs any Work contrary to laws or regulations, the Contractor shall bear all claims, costs, losses and damages arising therefrom; however, it shall not be the Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with laws and regulations, but this does not relieve the Contractor of the Contractor's obligation to review the Specifications and Drawings for errors and discrepancies and to call those matters to the attention of the Engineer.

## **6.8 Taxes.**

**6.8.1** The cost of all payroll taxes, sales and use taxes or any other taxes for which the Contractor is liable shall be included in the contract amount (the Bid) and the Contractor shall be solely liable for the payment of all such taxes.

**6.8.2** The Contractor shall pay only those sales, consumer, use and other similar taxes required to be paid by the Contractor in accordance with the laws and regulations of the State of North Carolina in the performance of its public works contract.

**6.8.3** The City is an exempt organization as defined by the General Statutes of North Carolina and is thereby exempt from the payment of sales and use taxes. The City will provide the Contractor with its sales tax exemption number and the Contractor will apply for the exemption in accordance with the state law for all required purchases made by the Contractor.

In the event the sales and use taxes are nevertheless payable at the time of purchase, the Contractor shall keep adequate records of all sales and/or use taxes paid and shall cooperate fully with the City in seeking any sales tax reimbursement due to the City including making any written claim required by the State of North Carolina. The Contractor shall provide the City with a sworn affidavit itemizing the quantity and value of the materials and rentals it has used on the Project and the amount of any sales and/or use taxes that has been paid on such materials or rentals in a timely manner so that the City may seek reimbursement for the calendar year or other taxable year as required by law.

## **6.9 Use of Premises:**

**6.9.1** The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The 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. Should any claim be made by any such owner or occupant because of or in connection with the performance of the Work, the Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim. The Contractor shall indemnify, defend and hold harmless the City and the Engineer and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorney's fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against the City and/or the Engineer or any other party indemnified hereunder to the extent caused by or based upon performance of the Work or failure to perform the Work.

**6.9.2** During the progress of the Work and on a daily basis, the Contractor shall keep the premises free from unnecessary accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. The Contractor shall leave the site clean and ready for occupancy by the City at substantial completion of the Work. The

Contractor shall, at a minimum, restore to original condition all property not designated for alteration by the Contract Documents. If the Contractor fails to clean up at the completion of the Work, the City may do so and the cost thereof will be charged against the Contractor.

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

**6.10 Record Documents.** The Contractor shall maintain in a safe place at the Project site, or other location acceptable to the Engineer at least one (1) record copy of all Drawings, Specifications, Addenda, change orders, change directives, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. Those record documents together with all final samples and all final Shop Drawings will be available to the Engineer and/or the City for reference during performance of the Work. Upon Substantial Completion of the Work, a copy of record documents, samples and Shop Drawings shall be promptly delivered to the City.

**6.11 Safety and Protection:**

**6.11.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. If requested by the Engineer, the Contractor shall submit a site security plan for approval by the Engineer. By reviewing the plan or making recommendations or comments, neither the City nor the Engineer will assume liability nor will the Contractor be relieved of liability for damage, injury or loss. The 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 Work 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, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

**6.11.2** The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of underground facilities, and 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. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, subcontractor, supplier or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts, any of them, may be liable, shall be remedied by the Contractor.

It shall be the duty and responsibility of the Contractor and all of its subcontractors to be familiar with and comply with 29 USC Section 651, et seq., the Occupational Safety and Health Act of 1970, as amended (“OSHA”) and to enforce and comply with all provisions of the Act as well as any state counterpart to the Act. All rules and regulations, orders, and directives, either general or specific to the project, issued by the U.S. Department of Labor and/or the North Carolina Department of Labor or any agencies thereof shall be observed by the Contractor to the satisfaction of the department or agency issuing the same.

Before commencing any excavation which will exceed a depth of five (5) feet, unless some law or regulation establishes a lesser depth, the Contractor shall provide the Engineer with detailed plans and specifications regarding the safety systems to be utilized.

**6.11.3 Safety Representative.** The Contractor shall designate in writing 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. Upon request of the Engineer, the Contractor shall provide certifications or other documentation of the safety representative’s qualifications.

**6.11.4 Hazard Communication Programs.** The 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 the various subcontractors, suppliers and other employers at the site in accordance with laws and regulations.

### **6.11.5 Emergencies:**

- 1.** In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, the Contractor shall act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. The Contractor shall give the Engineer telephone notification as soon as reasonably practical and a prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a Change Order will be issued to document the consequences of such action; otherwise the City will not be responsible for the Contractor's emergency action.
- 2.** The Superintendent, the safety representative and/or other authorized agents of the Contractor shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on the Project site of the Contractor or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should the Contractor and/or its agent fails to respond and take action to alleviate such an emergency situation, the City may direct other forces to take action as necessary to remedy the emergency condition, and the City will deduct any cost of such remedial action from the funds due to the Contractor under this Contract.
- 3.** In the event there is an accident involving injury to any individual or damage to any property on or near the Work, the Contractor shall provide to the Engineer verbal notification within one (1) hour and written notification within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining

medical reports, police accident reports and other documentation that describes the event. Copies of such documentation shall be provided to the Engineer for the City's records within forty-eight (48) hours of the event. The Contractor shall cooperate with the City on any City investigation of any such incident.

**6.12 Continuing the Work.** The Contractor shall carry on the Work and adhere to the Construction Schedule during all disputes or disagreements with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the City and the Contractor may otherwise agree in writing.

**6.13 The Contractor's General Warranty and Guarantee.**

**6.13.1** The Contractor warrants and guarantees to the City that all Work will conform to the Plans and Specifications, be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. Materials and equipment furnished will be new and of good quality unless otherwise required or permitted by the Contract Documents. This warranty will survive the termination or expiration of the Contract and continue for a period of twelve (12) months following the date of final acceptance of the Work or beneficial occupancy. The Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than the Contractor, subcontractors or suppliers; or
2. Normal wear and tear under normal usage.

**6.13.2** The Contractor's obligation to perform and complete the Work in a good and workmanlike manner 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 the City and/or the Engineer;
2. Recommendation of any progress or final payment by the Engineer;

3. The issuance of a certificate of substantial completion or any payment by the City to the Contractor under the Contract Documents;
4. Use or occupancy of the Work or any part thereof by the City;
5. Any acceptance by the City or any failure to do so;
6. Any review of Shop Drawings or sample submittal;
7. Any inspection, test or approval by others; or
8. Any correction of defective Work by the City.

#### **6.14 Indemnification.**

**6.14.1** The Contractor shall defend, indemnify and hold harmless the City and/or the Engineer (the "Indemnified Parties") 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 resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

1. 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, and
2. Is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone whose acts any of them may be liable.

**6.14.2** In the event the Contractor unreasonably delays progress of the Work being done by others on the site so as to cause loss for which the City becomes liable, then the Contractor shall indemnify the City from and reimburse the City for such loss.

**6.15 Survival of Obligations.** All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

**6.16 Losses from Natural Causes.** Unless otherwise specified, all loss or damage to the Contractor arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual obstructions or difficulties which may be encountered in prosecution of the Work, shall be sustained and borne by the Contractor at its own cost and expense.

**6.17 Notice of Claim.** Should the Contractor suffer injury or damage to person or property because of any error, omission or act of the City or its Engineer or others for whose acts the City is liable, a Claim must be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The provisions of this paragraph 6.17 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

**6.18 Liquidated Damages.** The Contractor shall be liable for liquidated damages for the failure of the Contractor to timely complete the Work or any portion thereof within the Contract Time.

## **ARTICLE 7 – CITY’S RESPONSIBILITIES.**

**7.1** Prior to the start of construction, the City will designate in writing a person or entity to act as the City’s representative during construction. Generally it will be the Engineer, but the City shall have the right to appoint a Project Expediter as its representative or may appoint its own Project Manager. Except as otherwise provided in these General Conditions, the City shall issue all communications to the Contractor through the City’s representative. Notices required by the Contractor to be given to the City will be deemed effective if given in writing to the Engineer or the other person designated as the City’s representative. Likewise, the Contractor shall be entitled to rely upon notices required to be issued by the City if such notices are issued by the Engineer or by the City’s Representative.

**7.2** The City will not supervise, direct, control or have authority over or be responsible for the Contractor’s means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto. The City is not responsible for any failure of the Contractor to comply with laws and regulations applicable to furnishing or performing the Work. The City is not responsible for the Contractor’s failure to perform or furnish the Work

in accordance with the Contract Documents. Failure or omission of the City to discover, or object to or condemn any defective Work or material shall not release the Contractor from the obligation to properly and fully perform the Contract.

**7.3** The City is not responsible for the acts or omissions of the Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work. The Contractor acknowledges and agrees that the City's direction to perform Work in accordance with the approved Construction Schedule is not a demand for acceleration or a dictation of the Contractor's means or methods.

**7.4** Information or services under the City's control shall be furnished by the City with reasonable promptness to avoid delay in orderly progress of the Work. The City shall have a reasonable amount of time to investigate site conditions, review submittals, analyze requests for changes, and to make other decisions in the orderly administration of the Contract. The Contractor must notify the City in writing, if the time for the investigation, review, analysis of any submittals, required for changes or otherwise required for the City's decision, impacts in any way the critical path of the approved Construction Schedule.

**7.5** The foregoing are in addition to other duties and responsibilities of the City enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to Contractor and Completion).

## **ARTICLE 8 – OTHER WORK.**

**8.1** The City may perform other work related to the Project at the site by the City's own forces, or let other contracts therefore, or have other work performed by utility owners. The Contractor and the City agree to and shall use best efforts to cooperate and coordinate the Work with others performing work and other work related to the Project in order to avoid conflicts and delays in the Work.

**8.2** The Contractor shall afford other contractors who are in a contract with the City and each utility owner (and the City, if the City is performing the additional work with the City's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, the Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The 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 the Engineer and the other contractors whose work will be affected. The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors.

**8.3** If the proper execution or results of any part of the Contractor's Work depends upon work performed by others under this Article 7, the Contractor shall inspect such other work and promptly report to the 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 the Contractor's Work. The Contractor's failure to report will constitute an acceptance of such other work as fit and proper for integration with the Contractor's Work except for latent or non-apparent defects and deficiencies in such other work.

**8.4** The City shall provide for coordination of the activities of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Engineer in reviewing their Construction Schedules when directed to do so. On the basis of such review, the Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The agreed upon Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate contractors and the City until subsequently revised.

**8.5** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible.

## **ARTICLE 9 – ENGINEER.**

### **9.1 Engineer's Authority and Responsibilities.**

**9.1.1** The duties and responsibilities as well as any limitations on the authority of the Engineer during construction, as set forth in the Contract Documents, may either be assigned by the City to an outside (non-employee) professional engineer, architect, etc., or may be assumed by the City or an employee of the City. The authority and responsibilities of the Engineer, if the Engineer is an outside or non-employee of the City shall be established and governed by the separate written agreement between the City and the Engineer who is an outside, non-employee of the City. The assignment of any authority, duties or responsibility to an Engineer by a separate agreement between the City and such Engineer, or any undertaking, exercise or performance of such authority, duties or responsibilities by the outside Engineer, is intended to be for the sole and exclusive benefit of the City and is not intended to be for the benefit of the Contractor.

**9.1.2** The Engineer will not supervise, direct, control or have authority over or be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or for the safety precautions and programs incident thereto. The Engineer is not responsible for any failure of the Contractor to comply with laws and regulations applicable to the furnishing or performing the Work. The Engineer is not responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents. The failure or omission of the Engineer to discover, to object to or to condemn any defective Work or material shall not release the Contractor from the obligation to properly and fully perform the Contract and to comply with all laws.

**9.1.3** The Engineer is not responsible for the acts or omissions of the Contractor, or of any subcontractor, of any tier, or any supplier, or any other person or organization performing or furnishing any of the Work.

**9.1.4** If permitted by the City, the Engineer will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, for the purpose of determining, in general, 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.

**9.2 City's Representative.** The Engineer, if the Engineer is a direct employee of the City, will be the City's Representative for all purposes under the Contract Documents. If, however, the Engineer is an independent contractor and not a direct employee of the City (i.e. an outside architect, design professional or engineer), then the Engineer may be the City's representative under the Contract Document, but the City also reserves the right to appoint some other person in addition to the Engineer in addition to or in lieu of the Engineer as the City's representative for receiving notices and approving change orders. The City's representative will normally be identified and the contact information provided in the written notice to proceed. However, the Contractor may assume that the Engineer is the City's representative for all purposes until such time as the Contractor is otherwise advised in writing.

**9.3 Inspections.** The Engineer will make visits to the site at intervals appropriate to the various stages of construction and in accordance with normal

professional standards 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 the Contractor's completed Work. If the Engineer is an outside consultant, the extent of such observation, investigation and inspection will be governed by the separate agreement between the City and such consultant. Based upon information obtained by the Engineer during such visits, observations, investigations and inspections, the Engineer will endeavor for the benefit of the City to determine if the Work is proceeding in accordance with the Contract Documents. While the Engineer may not be required to make exhaustive or continuous onsite inspections to check the quality or quantity of the Work, the Engineer's efforts will be directed towards providing the City with a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, the Engineer will keep the City informed of the progress of the Work and using his professional expertise will endeavor to protect the City from defective Work. The Engineer's visits and onsite observations are subject to the limitations on the Engineer's authority and responsibility in the event the Engineer is an outside consultant.

**9.4 Resident Project Representative.** If the City and the Engineer agree, the Engineer will furnish a Resident Project Representative to assist the Engineer in providing more continuous observation, investigation and inspection of the Work. The responsibilities and the authority as well as the limitations of any such Resident Project Representative or any assistants will be determined by the separate agreement with the Engineer who is an outside consultant.

**9.5 Clarifications and Interpretations.** The Engineer may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness and will be binding on the City and the Contractor.

**9.6 Rejecting Defective Work.** The Engineer will recommend that the City disapprove or reject Work which the Engineer believes to be defective, or believes will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

**9.7 Shop Drawings.** As provided in Section 2.6, the Engineer shall coordinate and approve all shop drawings, product data sheets and samples as set forth therein.

## **ARTICLE 10 – CHANGES IN THE WORK.**

### **10.1 Changes.**

**10.1.1** Without invalidating the Contract and without notice to any surety, the City may, at any time or from time to time, order additions, deletions or revisions in the Work. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order. In the event that the City and the Contractor are unable to negotiate the terms of a Change Order for the performance of additional Work, the City may, at its election, perform such additional Work with its own forces or with another contractor and such work will be considered “Other Work” in accordance with Article 8.

**10.1.2** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order. The Contractor’s proposals for changes in the Contract Amount and/or Contract Time shall be submitted within ten (10) calendar days of request by the Engineer, including impacts to the approved Progress Schedule, unless the Engineer grants an extension. The City will review each proposal and respond to the Contractor within ten (10) calendar days. After review by the City, the Contractor shall provide any supporting data requested by the Engineer within seven (7) calendar days, unless the Engineer grants an extension. The City will determine within seven (7) calendar days whether to pursue the change in Work.

**10.1.3** The Contractor shall not be entitled to an increase in the Contract Amount or an extension of the Contract Time with respect to any Work performed that is not required, authorized by a written amendment or except in the case of an emergency as provided in Paragraph 6.11.5 or in the case of uncovering Work as provided in Paragraph 13.4.3.

**10.1.4** Except in the case of an emergency as provided in Paragraph 6.11.5, a Change Order or Change Directive is required before the Contractor commences any activities associated with a change in the Work which, in the Contractor’s opinion, will result in a change in the Contract Amount and/or Contract Times.

**10.1.5** 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 Amount 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 the Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## **10.2 Change Orders.**

**10.2.1** The City and the Contractor will execute appropriate written Change Orders covering:

1. Approved changes in the Work;
2. The amount of the adjustment in the Contract Amount, if any, for approved changes in the Work.
3. The extent of the adjustment in the Contract Time, if any, for approved changes in the Work.

**10.2.2** An executed Change Order shall represent the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time owed to the Contractor or the City as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

## **10.3 Field Order.**

**10.3.1** The Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the Contract Times and are compatible with the design concept of the completed Project as functioning whole as indicated by the Contract Documents. Normally minor changes may be accomplished by written Field Order and shall be binding on the City and on the Contractor who shall perform the Work involved promptly.

**10.3.2** If the Contractor believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Times, the Contractor shall make a prompt written request to the City's Representative for a Change Order. Any request by the Contractor for an adjustment in Contract Amount and/or Contract Times must be made in writing prior to the beginning of the work covered by the Field Order.

**10.4 No Damages for Delay.** The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by failure of the City to provide information or material, if any, which is to be furnished by the City or access to the Work and only to the extent that such acts continue after the Contractor furnishes the City with written notice of such failure. When such extra compensation is claimed a written statement thereof shall be presented by the Contractor to the Engineer and if by the City is found correct, shall be approved. If delay is caused by specific orders given by the City to stop work or by performance of extra Work, or by failure of the City to provide material or necessary instructions for carrying on the Work, then such delay will entitle the Contractor to an equivalent extension of time, the Contractor's application for which shall, however, be subject to approval of the City. No such extension of time shall release the Contractor or surety on its performance bond from all of the Contractor's obligations hereunder which shall remain in full force until discharge of the Contract. In no event shall the Contractor be entitled to any compensation or recovery of any special damages in connection with any delays, including, without limitation: consequential damages, loss opportunity costs, impact damages, or other similar damages. The City's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the City's exercise of such rights or remedies, shall not be construed as active interference in the Contractor's performance of the Work. Except as otherwise provided herein, an extension of the Contract Time, to the extent permitted under Article 12, shall be the sole remedy of the Contractor for any acknowledged delays.

#### **ARTICLE 11 – CHANGE OF CONTRACT AMOUNT.**

**11.1** The Contract Amount is stated in the Bid and the Agreement and, including adjustments approved in writing (i.e. change order), is the total amount payable by the City to the Contractor for the performance of the Work under the Contract Documents.

**11.2** The Contract Amount shall only be changed by a Change Order. Any claim for an adjustment in the Contract Amount shall be made by written notice delivered by the party making the claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within thirty (30) calendar days after written notice of claim is delivered by claimant, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If the City and the Contractor cannot otherwise agree, all claims for adjustment in the Contract Amount shall be determined as set out in Article 16.

### **11.3 Determination of Value of Work.**

**11.3.1** The value of any Work covered by a Change Order for an adjustment in the Contract Amount will be determined by one or more of the following methods:

1. By application of unit prices contained in the Contract Documents to the quantities of the items involved.
2. By a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
3. By cost of Work plus the Contractor's fee for all overhead costs and profit as may be agreed upon.

**11.3.2** When unit prices have been agreed upon in the Contract Documents, those unit prices shall be used to determine the value of any Work required by a Change Order. Otherwise, the City and the Contractor agree to determine the value of the Work using the methods described above except that no costs will be included in the value of the Work for the time spent preparing the Change Order nor for negotiating the Change Order.

### **ARTICLE 12 – TIMES.**

**12.1 Change of Time.** The Contract Time may only be changed by a Change Order or by a written modification of the Agreement. In submitting a bid, the Contractor has had the opportunity to review the complexity of the Work, the field conditions and other normal conditions, including weather and delays in the delivery of materials and supplies and agreed that the Contract Time was reasonable for this Project. The ability to complete the Work within the Contract Time is a material part of the Agreement and the award of the Contract to the Contractor.

**12.2 Claim for Extension of Time.** A Claim by the Contractor for an adjustment or extension in the Contract Time shall be based upon written notice submitted by the Contractor to the Engineer. The notice shall set forth in detail the justification for the adjustment for extension of the Contract Time. Extensions will not be granted due to matters within the control of the Contractor including such matters as normal or expected days of inclement weather, delays in the commencement of construction, normal delivery times for materials and supplies, the normal lost time due to weather. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the Contractor.

**12.3 Delays beyond Contractor's Control.** An extension of the Contract Time may be warranted in those situations where the Contractor is prevented from completing any part of the Work within the Contract Time due to a delay, duly recorded at the time of the delay, which is beyond the control of the Contractor. The Contract Time may, in the discretion of the Engineer, be extended in an amount equal to the time lost due to such delay if a claim is made under this section in a timely manner. Delays beyond the control of the Contractor include, among other things, acts or neglect by the City, acts or neglect of utility owners or other contractors (but not subcontractors, of any tier, working under the supervision of the Contractor), performing other work on the project, fires, floods, epidemics, abnormal weather conditions or acts of God.

**12.4** Notwithstanding the extension or the denial of an extension of the Contract Time, the Contractor shall not be entitled to damages or any increase in the Contract Amount or any additional payments of any kind due to a delay in the completion of the Work by the Contractor. However, this section shall not be construed to prevent a claim for change in the Contract Amount pursuant to Article 11 due to delay, interference or disruption directly attributable to the actions or the inactions of the City or anyone for whom the City is responsible.

**12.5 Procedure.** A request for the extension of the Contract Time shall be submitted to the Engineer immediately following the event which the Contractor believes to justify an extension. The Engineer shall promptly review the request and within seven (7) days submit its recommendation to the City. Within seven (7) days from the time the City receives the request and the Engineer's recommendation, the City shall either authorize the issuance of a Change Order extending the Contract Time or if the request is denied, provide the Engineer and Contractor with the reasons for the denial. Requests for extensions of time accumulated and not submitted in a timely manner or not submitted until the end of the Contract Time will not be granted.

### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.**

**13.1 Notice of Defects.** Prompt notice of all defective Work of which the City or the Engineer has actual knowledge will be given to the Contractor. All defective Work may be rejected, corrected or accepted as provided herein. The Contractor must give the City and the Engineer prompt notice of any defective Work of which the Contractor has actual knowledge.

**13.2 Access to Work.** The City, and its consultants, the Engineer and other representatives and personnel of the City, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at all

reasonable times for observing, inspecting and testing. The Contractor shall provide them proper and safe conditions for such access, and advise them of the Contractor's site safety procedures and programs so that they may comply therewith as applicable.

### **13.3 Tests and Inspections.**

**13.3.1** The Contractor shall give timely notice of readiness of the Work for all required inspections, test or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

**13.3.2** The City shall employ and pay for 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 Paragraph 13.3.3 below;
2. Those costs incurred with tests or inspections conducted pursuant to Paragraph 13.4.3 below shall be paid as provided in Paragraph 13.4.3;
3. For reinspecting or retesting defective Work; and
4. As otherwise specifically provided in the Contract Documents. All testing laboratories shall meet the requirements of ASTM E-329.

**13.3.3** 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, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish the Engineer the required certificates of inspection or approval.

**13.3.4** The Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the City's and the Engineer's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to the Contractor's purchase thereof for incorporation in the Work.

### **13.4 Uncovering Work:**

**13.4.1** If any Work (or the work of others) that is to be inspected, tested or approved is covered by the Contractor without written concurrence of the Engineer, or if any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered and recovered at the Contractor's expense.

**13.4.2** Uncovering Work as provided in Paragraph 13.4.1 shall be at the Contractor's expense unless the Contractor has given the Engineer timely notice of the Contractor's intention to cover the same and the Engineer has not acted within five (5) working days to such notice.

**13.4.3** If the Engineer considers it necessary or advisable that covered Work be observed, inspected or tested, the Contractor shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor shall pay all claims, costs, losses and damages caused by, arising out of or resulting from 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 the City shall be entitled to an appropriate decrease in the Contract Amount, and may make a claim as provided in Article 11. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Amount or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction.

### **13.5 City May Stop the Work.**

**13.5.1** If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any surety or other party.

**13.5.2** If the Contractor fails to correct defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, the City may order the Contractor to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not be the basis for extending the Contract Time.

**13.6 Correction or Removal of Defective Work.** If required by the City, the Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Engineer, remove it from the site and replace it with Work that is not defective. The Contractor shall correct or remove and replace defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of defective Work. The Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including, but not limited to, all costs of repair or replacement of work of others).

**13.7 Warranty period.**

**13.7.1** If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents (e.g. Paragraph 14.11.2), any Work, including work performed after the Substantial Completion date, is found to be defective, the Contractor shall promptly, without cost to the City and in accordance with the City's written instructions:

- (i) correct such defective Work, or, if it has been rejected by the City, remove it from the site and replace it with Work that is not defective, and
- (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and

replacement (including, but not limited to, all costs of repair or replacement of work of others) will be paid by the Contractor. The warranty period will be deemed to be renewed and recommended in connection with the completed items of Work requiring correction.

**13.7.2** In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all of the Work, the warranty period for that item may start to run from an earlier date if so provided in the Contract Documents.

**13.7.3** If correction of defective Work will affect the function or use of the facility, the Contractor shall not proceed with correction of defective Work without prior coordination and approval of the City.

**13.7.4** The obligations of the Contractor to perform warranty work will survive the acceptance of the Work and any termination of the Contract.

**13.8 Acceptance of Defective Work.** If, instead of requiring correction or removal and replacement of defective Work, the City may in its discretion, accept the defective Work at some reduced value or subject to some special condition applicable to the particular defective Work. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions of the Contract Documents and compensating the City for the diminished value of the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by the Contractor to the City after a calculation by the City of the diminution in value of the defective Work.

**13.9 The City May Correct Defective Work.** If the Contractor fails within a reasonable time after Written Notice of the City to correct defective Work, or to remove and replace rejected Work, or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven (7) calendar days' Written Notice to the Contractor, correct and remedy any such deficiency. If, in the opinion of the Engineer, significant progress has not been made during this seven (7) calendar day period to correct the deficiency, the City may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, the City shall proceed expeditiously. In connection with such corrective and remedial action, the City may exclude the Contractor from all or part of the site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, and incorporate in the

Work all materials and equipment stored at the site or for which the City has paid the Contractor, but which are stored elsewhere. The Contractor shall allow the City, its agents and employees, the City's other contractors, the Engineer and the Engineer's consultant's access to the site to enable the City to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the City in exercising such rights and remedies will be charged against the Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. The Contractor shall not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by the City or the City's rights and remedies hereunder.

## **ARTICLE 14 - PAYMENTS TO THE CONTRACTOR AND COMPLETION.**

### **14.1 Application for Progress Payments.**

**14.1.1** No more often than once a month unless otherwise agreed to in writing by the City, the Contractor shall submit to the Engineer (unless some other representation is approved by the City to process progress payment applications) for review an application for payment, in a form acceptable to the City, filled out and signed by the 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.

**14.1.2** Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives, but not yet included in Change Orders.

**14.1.3** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.

**14.1.4** If payment is requested on the basis of materials or 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 be accompanied by such bills of sale, data and other procedures satisfactory to the City substantiating the City's title to such materials or equipment or otherwise protecting the City's interest. Payment on account of such materials or equipment will not include any amount for the Contractor's overhead or profit or relieve the Contractor of its obligation to protect and install such materials or equipment in accordance with the requirements of the

Contract and to restore damaged or defective Work. If materials or equipment are stored at another location, at the direction of the City, they shall be stored in a bonded and insured facility, accessible to the Engineer and the City, and shall be clearly marked as property of the City. Title to materials delivered to the site of the Work or a staging area will pass to the City upon payment by the City without the necessity for further documentation. Risk of loss will not pass to the City until acceptance.

**14.1.5** The City will pay to the Contractor the total amount of the approved application for payment less a five percent (5%) retainage; provided, however, that after fifty percent (50%) of the Work has been satisfactorily completed on schedule, with the approval of the City and with written consent of the surety, further requirements for retainage will be waived so long as the Work continues to be completed in a satisfactory manner and on schedule, but subject to the provisions of 14.4. Notwithstanding this section, any payment under this Contract is subject to the provisions of G.S. 143-134.1 including restrictions on the retainage on any periodic or final payment and/or the payment of interest on a final payment. Likewise, the Contractor is subject to the provisions of G.S. 143-134.1(b) and (b1) governing payments by the contractor to subcontractors (of any tier).

**14.1.6** Applications for payment shall include the following documentation:

1. Updated Progress Schedule;
2. Monthly subcontractor report;
3. Any other documentation required under the Supplemental General Conditions.

**14.2 Contractor's Warranty of Title.** The 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 the City free and clear of all liens no later than the time of payment to the Contractor.

### **14.3 Review of Applications for Progress Payments.**

**14.3.1** The Engineer will, within seven (7) calendar days after receipt of each application for payment, either indicate a recommendation for payment and forward the application for processing by the City, or return the application to the Contractor indicating the Engineer's reasons for refusing to recommend payment. In the latter case, the Contractor shall make the necessary corrections and resubmit the application.

**14.3.2** The Engineer's recommendation of any payment requested in an application for payment will constitute a representation by the Engineer, based upon the Engineer's on-site observations of the executed Work and on the Engineer's review of the application for payment and the accompanying data and schedules, that to the best of the Engineer's knowledge, information and belief:

1. The Work has progressed to the point indicated; and
2. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, 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, and to any other qualifications stated in the recommendation).

**14.3.3** By recommending any such payment, the Engineer will not thereby be deemed to have represented that:

1. Exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, unless the City and the Engineer have agreed otherwise;
2. Examination has been made to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Amount;
3. The Contractor's construction means, methods, techniques, sequences or procedures have been reviewed; or

4. That there may not be other matters or issues between the parties that might entitle the Contractor to be paid additionally by the City or entitle the City to withhold payment to the Contractor.

#### **14.4 Decisions to Withhold Payment.**

**14.4.1** The City may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

1. Defective Work not remedied;
2. Third party claims filed or reasonable evidence indicating probable filing of such claims;
3. Failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
5. Damage to the City or another contractor;
6. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
7. Failure of the Contractor to submit a schedule of values in accordance with the Contract Documents;
8. Failure of the Contractor to submit a submittal schedule in accordance with the Contract Documents;
9. Failure of the Contractor to submit and update a construction Progress Schedule in accordance with the Contract Documents;
10. Failure of the Contractor to maintain a record of changes on drawings and documents;

**11.** Failure of the Contractor to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of the City;

**12.** Failure of the Contractor to submit monthly subcontractor reports;

**13.** The Contractor's neglect or unsatisfactory prosecution of the Work, including failure to clean up;

**14.** Failure of Contractor to comply with the Morganton City Code, Chapter \_\_\_\_\_, as amended, "Minority-Owned and Women-Owned Business Enterprise Program", or

**15.** Failure of Contractor to comply with any Minority Business Enterprise requirements.

**14.4.2** When the above reasons for withholding payment are removed, the Contractor shall resubmit a statement for the value of the Work performed. Payment will be made within thirty (30) calendar days of receipt of approved application for payment.

#### **14.5 Substantial Completion:**

**14.5.1** When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Contractor shall notify the City's Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If the City's Representative does not consider the Work substantially complete, the City's Representative will notify the Contractor giving reasons therefor. After performing any required Work, the Contractor shall then submit another request for the City's Representative to determine Substantial Completion. If the City's Representative considers the Work substantially complete, the City's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which the Contractor shall finish

the punch list, and shall establish responsibilities of the City and the Contractor for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. The certificate of Substantial Completion shall be signed by the City and the Contractor to evidence acceptance of the responsibilities assigned to them in such certificate.

**14.5.2** The City shall have the right to exclude the Contractor from the Work after the date of Substantial Completion, but the City will allow the Contractor reasonable access to complete or correct items on the punch list and complete warranty work.

**14.6 Partial Utilization.** Use by the City, at the City's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

**14.6.1** The City at any time may request the Contractor to permit the City to use any such part of the Work which the City believes to be ready for its intended use and substantially complete. If the Contractor agrees that such part of the Work is substantially complete, the Contractor shall certify to the Engineer that such part of the Work is substantially complete and request the Engineer to issue a certificate of substantial completion for that part of the Work. The Contractor at any time may notify the Engineer that the Contractor considers any such part of the Work ready for its intended use and substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the Work. The provisions of paragraphs 14.6.1 and 14.6.2 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.

**14.6.2** Such partial utilization is authorized by public authorities having jurisdiction over the Work.

**14.7 Final Inspection.** Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the City's Representative will make a final inspection with the Contractor and provide written notice of all particulars in which this inspection reveals that the Work is incomplete or defective. The Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

**14.8 Final Application for Payment.** The Contractor may make application for final payment following the procedure for progress payments after the Contractor has completed all such corrections to the satisfaction of the City's Representative and delivered the following documents:

**14.8.1** Affidavit by the Contractor certifying the payment of all debts and claims;

**14.8.2** Three (3) complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;

**14.8.3** Record documents (as provided in Paragraph 6.10);

**14.8.4** Consent of surety, if any, to final payment. If surety is not provided, complete and legally effective releases or waivers (satisfactory to the Owner) of all claims arising out of or filed in connection with the Work;

**14.8.5** Certificate evidencing that insurance required by the Supplemental General Conditions will remain in force after final payment and through the warranty period;

**14.8.6** Non-Use of Asbestos Affidavit (after construction);

**14.8.7** Subcontractor report and all other documentation necessary for evaluation of the Contractor's fulfillment of the Contract goals;

**14.8.8** Documentation of notice to claimants, to the extent applicable and subject to subparagraph 14.11.4; and

**14.8.9** Any other documentation called for in the Contract Documents.

#### **14.9 Final Payment and Acceptance.**

**14.9.1** If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the Engineer is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, the Engineer will recommend the final Application for Payment and thereby notify the City, who will pay to the Contractor the balance due the Contractor under the terms of the Contract.

**14.9.2** If the Contract measures Contract Time to Final Completion, rather than Substantial Completion, the Engineer will issue a letter of final acceptance to the Contractor which establishes the Final Completion date and initiates the one-year warranty period, unless the sole remaining unfinished items include such things as landscaping or the re-establishment of vegetation, then the Engineer may issue a letter of conditional acceptance to the Contractor which establishes a final completion date and initiates the one year warranty period, provided further, the Contractor has executed a letter committing to the unfinished items and securing such letter through retainage, letter of credit or some other security acceptable to the City.

**14.9.3** Final payment is considered to have taken place when the Contractor or any of its representatives negotiates the City's final payment check, whether labeled final or not, for cash or deposits check in any financial institution for its monetary return.

**14.9.4** The City may withhold funds sufficient to cover the amount of any unresolved contract claims from the final payment.

**14.10 Waiver of Claims.** The making and acceptance of final payment will constitute:

**14.10.1** A waiver of claims by the City against the Contractor, except claims arising from unsettled claims, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any warranty specified therein, or from the Contractor's continuing obligations under the Contract Documents; and

**14.10.2** A waiver of all claims by the Contractor against the City other than those previously made in writing and still unsettled.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION.**

**15.1 The City may Suspend Work Without Cause.** At any time and without cause, the City may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by written notice to the Contractor which will fix the date on which the Work will be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be allowed an adjustment in the Contract Amount or an extension of the Contract Times, or both, directly attributable to any such suspension, if the Contractor makes an approved claim therefor as provided in Articles 11 and 12.

**15.2 The City May Terminate Without Cause.** Upon seven (7) calendar days' written notice to the Contractor, the City may, without cause and without prejudice to any right or remedy of the City, elect to terminate the Agreement. In such case, the Contractor shall be paid (without duplication of any items):

**15.2.1** For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;

**15.2.2** For reasonable demobilization costs;

**15.2.3** For anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination, but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity; and

**15.2.4** Where Contractor's services have been so terminated by the City, the termination will not affect any rights or remedies of the City against the Contractor and surety then existing or which may thereafter accrue. Any retention or payment of monies due the Contractor by the City will not release the Contractor from liability. In the event the City terminates the Contract with cause, the City may reject any and all bids submitted by the Contractor for up to three (3) years. In addition, in the event of a termination for cause, the Contractor and its principals shall not submit any further bids to the City for three (3) years after the date of such termination.

**15.4 The Contractor May Stop Work or Terminate.** If through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) calendar days by the City or under an order of court or other public authority, or (except during disputes) the City's Representatives fails to forward for processing any mutually acceptable application for payment within thirty (30) calendar days after it is submitted, or (except during disputes) the City fails for sixty (60) calendar days after it is submitted to pay the Contractor any sum finally determined by the City to be due, then the Contractor may, upon seven (7) calendar days' written notice to the City, and provided the City does not remedy such suspension or failure within that time, terminate the Agreement and recover from the City payment on the same terms as provided in Paragraph 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if (except during disputes) the Engineer has failed to forward for processing any mutually acceptable application for payment within thirty (30) calendar days after it is submitted, or (except during disputes), the City has failed for sixty (60) calendar days after it is submitted to pay the Contractor any sum finally determined by the City to be due, the Contractor may upon seven (7) calendar days' written notice to the City stop the Work until payment of all such amounts due the Contractor, including interest thereon. The provisions of this Paragraph 15.4 are not intended to preclude the Contractor from making a claim under Articles 11 and 12 for an increase in the Contract Amount or Contract Times or otherwise for expenses or damage directly attributable to the Contractor's stopping work as permitted by this paragraph.

**15.5 Discretionary Notice to Cure.** In its complete discretion, the City may, but is not required to, provide a notice to cure to the Contractor and its surety to cure an event of default described above and/or an anticipatory breach of contract and, if required by the City, to attend a meeting with the City, regarding the notice to cure, the event of default, and/or the anticipatory breach of contract. The notice to cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any notice to cure, the Contractor shall prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the notice to cure. The Contractor's report must be delivered to the City at least three (3) days prior to any requested meeting with the City and surety.

**15.6 Bankruptcy.** If the Contractor declares bankruptcy or is adjudged bankrupt or makes an assignment for the benefit of creditors or if a receiver (trustee) is appointed for the benefit of creditors or if a receiver is appointed by reason of the Contractor's insolvency, the Contractor may be unable to perform this Contract in accordance with the Contract requirements. In such event, the City may demand the Contractor or its successor in interest provide the City with adequate

assurance of the Contractor's future performance in accordance with the terms and conditions of the Contract. If the Contractor fails to provide adequate assurance of future performance to the City's reasonable satisfaction within ten (10) days of such a request, the City may terminate the Contractor's services for cause or without cause, as set forth above. If the Contractor fails to provide timely adequate assurance of its performance and actual performance, the City may prosecute the Work with its own forces or with other contractors on a time and material or other appropriate basis and the costs of which will be charged against the Contract balance.

**15.7 Duty to Mitigate.** In the event of any termination or suspension under this Contract, the Contractor agrees to and shall take all reasonable actions to mitigate its damages and any and all claims which may be asserted against the City.

**15.8 Responsibility during Demobilization.** While demobilizing, the Contractor will take all necessary and reasonable actions to preserve and protect the Work, the site and other property of the City or others at the site.

## **ARTICLE 16 – DISPUTE RESOLUTION.**

**16.1 Disputes.** Disputes between the City and the Contractor, or involving the Engineer, who is not an employee of the City, shall be resolved in accordance with this article. Furthermore, the Contractor agrees to attempt to resolve all disputes between the Contractor and other contractors (where there are multiple prime contractors) or between the Contractor and subcontractors or between the subcontractors utilizing the procedures of this article. Disputes shall be resolved as quickly as possible and as informally as possible so that the Work will not be delayed or unnecessarily interrupted and so that additional costs involved in resolving the dispute can be minimized. All parties agree to continue performing their portion of the Work not involved in the dispute throughout the process of resolving any dispute. Contract Times will not be extended nor will the Contract Amount be increased as a result of frivolous disputes, the abuse of the dispute resolution process, failure to participate in good faith in the dispute resolution process or the failure to proceed with the Work that is not involved in the particular dispute.

**16.2 Informal Process.** Prior to the submission of a written request for mediation in accordance with Section 16.3 below, the Contractor, any other prime contractor issued a contract by the City for this project, or any subcontractor must first submit its claim to the Engineer for review. If the dispute is not resolved through the involvement and instructions of the Engineer, then the parties to the dispute may use the formal dispute resolution process described below.

If the claim is against the City, and if the Engineer is an employee of the City, the Engineer may select an outside architect, engineer or other design professional to review the dispute and resolve the issue and any costs of retaining the outside architect, engineer or design professional shall be shared equally between the parties to the dispute regardless of the results of the meeting. In an effort to resolve the dispute informally, the parties shall, to the extent feasible, secure the attendance at the meeting of at least one previously uninvolved senior level decision maker for each party to the dispute.

**16.3 Formal Dispute Resolution Process.** If the amount in controversy is at least fifteen thousand dollars (\$15,000) and if the effort to resolve the claim using the informal process described above is unsuccessful, the party may submit a request for mediation in writing to the other party or parties involved with a written copy of the request provided to the City unless the City is the other party involved in the claim.

The parties shall then select a mediator, enter into a mediation agreement, schedule the mediation conference and make a good faith effort to resolve the claim or dispute in accordance with subchapter 30H(01NCAC3H.0101 through 01NCAC3H.1001) of the North Carolina Administrative Code, Dispute Resolution Process Adopted by the State Building Commission all in accordance with the requirements of G.S. 143-128(f1), as amended or superseded.

By written agreement, the parties to the dispute may agree upon a different mediation process; however, as a condition of this Contract, the Contractor shall, in good faith, participate in the mediation process either adopted by the State Building Commission or a dispute resolution process, including mediation, as an alternative to the mediation process required above prior to the commencement of the filing of any lawsuit against the City.

## **ARTICLE 17 – MISCELLANEOUS.**

**17.1 Venue.** In the event of any suit or in equity involving the Contract, venue shall be exclusively in Burke County, North Carolina and the laws of the State of North Carolina shall apply to the interpretation and enforcement of the Contract.

**17.2 Extent of Agreement.** This Contract represents the entire and integrated agreement between the City and the Contractor with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

**17.3 Cumulative Remedies.** The rights and remedies available to the parties are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantees or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. Specifically, the City is not required to only assess liquidated damages, the City may elect to pursue its actual damages resulting from the failure of the Contractor to complete the Work in accordance with the requirements of the Contract Documents.

**17.4 Severability.** If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of this Contract; this being the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

**17.5 Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor is an independent contractor and the Contractor's services shall be those of an independent contract. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**17.6 Prohibition of Gratuities.** The City may, by written notice to the Contractor, terminate the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**17.7 Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

## **17.8 City's Right to Audit.**

**17.8.1** Records means all records generated by or on behalf of the Contractor and each subcontractor and supplier of the Contractor, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Contract, including, without limitation:

1. Accounting records;
2. Written policies and procedures;
3. Subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.);
4. Original estimates and estimating work sheets;
5. Correspondence;
6. Change Order files (including documentation covering negotiated settlements);
7. Back charge logs and supporting documentation;
8. General ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;
9. Lump sum agreements between the Contractor and any subcontractor or supplier;
10. Records necessary to evaluate: The Contract compliance, Change Order pricing, and any claim submitted by the Contractor or any of its payees; and
11. Any other Contractor record that may substantiate any charge related to this Contract.

**17.8.2** The Contractor shall allow the City's agent or its authorized representative to inspect, audit, and/or reproduce, or all three, all records generated by or on behalf of the Contractor and each subcontractor and supplier, upon the City's written request. Further, the Contractor shall allow the City's agent or authorized representative to interview any of the Contractor's employees, all subcontractors and all suppliers, and all their respective employees.

**17.8.3** The Contractor shall retain all its records, and require all its subcontractors and suppliers to retain their respective records, during this Contract and for three (3) years after final payment, until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, or as otherwise required by law, whichever is longer. The City's right to inspect, audit, or reproduce records, or interview employees of the Contractor or its respective subcontractors or suppliers exists during this Contract, and for three (3) years after final payment, until all audit and litigation matters that the City has brought to the Contractor's attention are resolved, or as otherwise required by law, whichever is longer, and at no cost to the City, either from the Contractor or any of its subcontractors or suppliers that may furnish records or make employees available for interviewing.

**17.8.4** The Contractor must provide sufficient and accessible facilities during its normal business hours for the City to inspect, audit, or reproduce records, or all three, and to interview any person about the records.

**17.8.5** The Contractor shall insert these requirements in each written contract between the Contractor and any subcontractor or supplier and require each subcontractor and supplier to comply with these provisions.

**17.9 Survival.** The terms and conditions of this Contract, which contemplate a period of time beyond completion or termination will survive such completion or termination and not be merged therein or otherwise terminated.

**17.10 No Waiver.** The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No waiver of any provision of this Contract will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, shall not constitute a waiver or estoppel of the right to do so.

**BID PROPOSAL FORM**  
**City of Morganton, North Carolina**  
**Project Name: South Sterling Street Storm Drain Relocation**  
**Project Location: 510 S Sterling St., Morganton, NC**  
**Project Number: N/A**

To: The City of Morganton, North Carolina

In response to the City's request for informal bids for the above-referenced project, the undersigned bidder hereby offers, for the amount stated below, to furnish all labor, materials, tools, equipment, apparatus, facilities, transportation and permits for the construction of the Project referenced above (or that portion of the Work for the Project assigned to the bidder described above) and hereby agrees to enter into an agreement for the construction of the Project, if accepted by the City Council of the City of Morganton in the amount of:

Total amount of Base Bid: \$\_\_\_\_\_ LUMP SUM.

The above amount is stated in figures only and is the total amount bid for the entire contract work including all applicable taxes. The undersigned bidder agrees that, if awarded the contract, it will enter into the Agreement providing for the construction of the Work and will commence the Work within the time specified in the written Notice to Proceed with project and that all work will be completed within the Contract Time of 120 calendar days.

Further, the undersigned acknowledges receipt of the following addenda:

\_\_\_\_\_  
(addenda dated \_\_\_\_\_)

\_\_\_\_\_  
(addenda dated \_\_\_\_\_)

\_\_\_\_\_  
(addenda dated \_\_\_\_\_)

The bidder should fill in the words "not applicable" for any of the lines left blank above.

By submitting a bid, the bidder acknowledges that it has carefully reviewed the bid documents, the General Conditions, any supplemental conditions, all Drawings and Specifications and that it carefully inspected the Project site for any conditions that may affect the Work required by the Contract Documents.

The bidder also acknowledges that Under-Utilized Business Enterprise (UBE) is not a requirement of this Project. However if the contractor, or any of its subcontractors, are an Under-Utilized Business Enterprise (formerly disadvantaged (DBE), or minority (MBE), or women-owned (WBE) enterprise), the City would ask that that be reported with the bid documents.

Attested to:

\_\_\_\_\_  
SECRETARY

(Seal)

Respectfully submitted,

\_\_\_\_\_  
(Firm Name)

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

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

License #: \_\_\_\_\_

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

South Sterling Street Storm Drain Relocation  
Itemized Proposal Sheet

Contractor \_\_\_\_\_

Item #	Item Name	Estimated Quantity	Unit	Unit Cost	Amount Bid
1	48" HDPE Storm Drain Pipe (Double Wall)	300	LF		
2	6' X6' X6' Catch Basin (Custom)	4	EA		
3	Concrete Fill	125	CY		
4	Grass, Seeding and Straw	0.05	AC		
5	Asphalt Patch	25	TON		
6	Incidental Stone	250	TON		

Total Base Bid \$ \_\_\_\_\_

Note:

1. See the following pages for the Item Descriptions
2. Any work not covered by a bid item is considered incidental and no payment will be made for such work.
3. If applicable the contractor may submit the (DBE, MBE,WBE) form with the bid. See bid proposal form.
4. Owner reserves the right to reduce scope of project at its discretion to meet budget limits.
5. Contractor shall be responsible for verification of all quantities listed in table.

## Itemized Descriptions

1. 48" HDPE Storm Drain Pipe (Double Wall) – Bid price per linear foot for the installation of 48" HDPE storm drain pipe per plans. Also included is proper shoring or trench boxes for pipe installation, as well as any erosion control necessary. The contractor is also responsible in this item for the clearing and the proper removal and disposal of debris off site. Contractor is also responsible to remove and restore fence to its proper location.
2. 6'X6'X6' Catch Basin (Custom) – Bid price per each installation of custom catch basin complete with lids, frame and grates etc. per plans. Also included under this item any additional repair to the existing storm drain at Station 3+03.39 with concrete block, rebar, masonry work etc. to reinforce and stabilize storm system.
3. Concrete Fill – Bid price per cubic yard for the concrete filling of the abandoned storm drain pipes. To be included in this bid item is the concrete flowable fill with the concrete pump and labor. Tickets will be collected for payment of this item.
4. Grass, Seeding and Straw – Bid price per acre to establish drought-resistant, fine, turf-type-fescue grass lawn by seeding on all disturbed areas per plans, specifications and manufacturer's specifications.
5. Asphalt Patch – Bid price per ton for the asphalt patch of areas that were removed for pipe installation. Tickets will be collected for payment of this item.
6. Incidental Stone - Bid price per ton for the placement of incidental stone for restoring driveways, parking lot and pipe installation. Also for catch basin and storm pipe where needed. Incidental Stone amount to be placed on project will be directed by utility inspector and Incidental Stone tickets shall be collected for the correct payment of this item.



# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

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

(Name of Bidder)

Affidavit of \_\_\_\_\_

I have made a good faith effort to comply under the following areas checked:

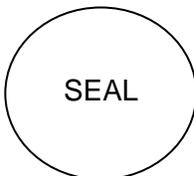
**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

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

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

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



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

# State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

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

Affidavit of \_\_\_\_\_

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_

\_\_\_\_\_ contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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

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

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

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



State of \_\_\_\_\_, County of \_\_\_\_\_

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

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

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

# State of North Carolina - AFFIDAVIT C - Portion of the Work to be Performed by HUB Certified/Minority Businesses

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

**(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)**

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.  
 This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

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

\_\_\_\_\_ (Project Name)  
 Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. Attach additional sheets if required

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

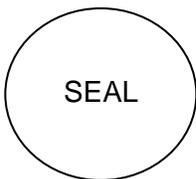
\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

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



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

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

State of \_\_\_\_\_, County of \_\_\_\_\_

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

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

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

# State of North Carolina AFFIDAVIT D – Good Faith Efforts

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

**(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)**

If the goal of 10% participation by HUB Certified/ minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

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

Project ID# \_\_\_\_\_ (Project Name) Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

**Examples** of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

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

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

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



State of \_\_\_\_\_, County of \_\_\_\_\_

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

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

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

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

**AFFIDAVIT**

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

NOW COMES Affiant, first being sworn, deposes and says as follows

1. \_\_\_\_\_ (“the Contractor/Supplier”) has submitted a bid for contract or desired to enter into a contract with the City of Morganton, and I am the \_\_\_\_\_ of the Contractor/Vendor.

2. As part of my duties and responsibilities pursuant to said bid and/or contract, I attest that the Contractor/Supplier is aware of and in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):

\_\_\_ After hiring an employee to work in the United States the Contractor/Supplier verifies the work authorization of said employee through E-Verify and retains the record of the verification of work authorization while the employee is employed and for one year thereafter; or

\_\_\_ The Contractor/Supplier employs less than twenty-five (25) employees in the State of North Carolina.

3. As part of my duties and responsibilities pursuant to said bid and/or contract, I attest that to the best of the Contractor’s/Supplier’s knowledge any subcontractors employed as a part of this bid and/or contract are in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):

\_\_\_ After hiring an employee to work in the United States the subcontractor verifies the work authorization of said employee through E-Verify and retains the record of the verification of work authorization while the employee is employed and for one year thereafter; or

\_\_\_ Employs less than twenty-five (25) employees in the State of North Carolina.

Pursuant to North Carolina General Statute § 143-133.3(c)(2), contracts solely for the purchase of apparatus, supplies, materials, and equipment are exempt from the E-Verify provision.

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

AFFIANT:

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

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

[OFFICIAL SEAL]

\_\_\_\_\_

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

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



RFP Number (if applicable): \_\_\_\_\_

Name of Vendor or Bidder: \_\_\_\_\_  
\_\_\_\_\_

**IRAN DIVESTMENT ACT CERTIFICATION  
REQUIRED BY N.C.G.S. 143C-6A-5(a)**

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As of the date listed below, the vendor or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

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Signature

Date

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Printed Name

Title

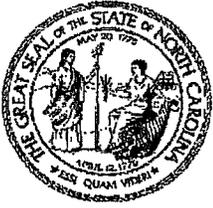
*Notes to persons signing this form:*

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When the bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran) and will be updated every 180 days.



NORTH CAROLINA  
DEPARTMENT OF STATE TREASURER  
STATE AND LOCAL GOVERNMENT FINANCE DIVISION  
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL  
TREASURER

GREGORY C. GASKINS  
DEPUTY TREASURER

**Memorandum # 2016-10**

TO: All Local Governments, Public Authorities and Their Independent Auditors  
FROM: Sharon Edmundson, Director, Fiscal Management Section  
SUBJECT: Iran Divestment Act Notice for Local Governments in North Carolina  
DATE: February 17, 2016

The North Carolina Department of State Treasurer is providing this letter to Local Government Units to explain new contracting and procurement compliance obligations created by the Iran Divestment Act of 2015 (N.C.G.S. 143C-6A-1 to 6A-9).<sup>\*</sup> Local Government Units should be aware that effective February 26, 2016, this law imposes new obligations on each new bid process, each new contract, and each renewal or assignment of an existing contract. The specific requirements are as follows:

- 1. Local Government Units must obtain a one-page mandatory certification under the Act.** (See sample "Contract Certification" form below for details.)
- 2. Local Government Units may not enter into contracts with any entity or individual found on the State Treasurer's Iran Final Divestment List.** This list will be posted on the Department of State Treasurer's website on February 26, 2016 and will be updated every 180 days. (See "Contract Restrictions" below for details.)

**Background**

The Iran Divestment Act's requirements applicable to Local Government Units\*\* will become effective on February 26, 2016, at the time the State Treasurer publishes the first list of prohibited companies and individuals (a "Final Divestment List") under the Act.

<sup>\*</sup> The Iran Divestment Act of 2015 can be found online at:

<http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S455v5.pdf>

<sup>\*\*</sup> The Act's requirements use the term "State agency." G.S. 143C-6A-3(7) provides that in the act, the term "State agency" includes not only State departments, boards, and commissions, but also "any political subdivision of the State" such as a Local Government Unit.

### **Final Divestment List**

The Department of State Treasurer develops the Final Divestment List using data from a research vendor, U.S. federal sanctions lists, and other credible information available to the public. It consists of any individual or company, including parent entities and majority owned subsidiaries, that:

- Provided goods or services of \$20,000,000 or more within any 12-month period in the energy sector of Iran during the preceding five years;
- Extended \$20,000,000 or more in credit, under certain circumstances, to another individual or company that will use the credit to provide goods or services in the energy sector in Iran. (G.S. 143C-6A-3(4).)

The Department of State Treasurer will update the Final Divestment List at least every 180 days. The list will be published on the State Treasurer's website at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) and periodically circulated to Local Government Units.

### **Requirement 1: Contract Certification**

For new procurements and new, renewed, or assigned contracts on or after February 26, 2016, each Local Government Unit must obtain a simple certification from each bidder or vendor. The bidder or vendor must affirm that it is not listed on the State Treasurer's Final Divestment List found at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) as of the date of signature. The certification is due at the time a bid is submitted or the time a contract is entered into, renewed, or assigned. (G.S. 143C-6A-5(a).)

We have attached on the next page a short form that can be used for this certification, but Local Government Units are free to instead use their own form or put the required certification in the text of a contract or purchase order. Each Local Government Unit shall maintain its own records demonstrating these certifications.

### **Requirement 2: Restriction on Contracting**

Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. 143C-6A-6(a).) Any existing contracts with these Iran-linked persons will be allowed to expire in accordance with the contract's terms. (G.S. 143C-6A-6(c).)

Contracts valued at less than \$1,000.00 are exempt from this restriction. (G.S. 143C-6A-7(a).) In addition, a Local Government Unit may contract with a listed individual or company if it makes a good-faith determination that (1) the commodities or services are necessary to perform its functions and (2) that, absent such an exemption, it would be unable to obtain those commodities or services. (G.S. 143C-6A-7(c).) Local Government Units shall enter such exemptions into the procurement record.

Memorandum #2016-10  
Iran Divestment Act  
February 17, 2016  
Page 3

The Act provides that vendors to Local Government Units may not utilize any subcontractor found on the State Treasurer's Final Divestment List. (N.C.G.S. 143C-6A-5(b).) It is each vendor's responsibility to monitor its compliance with this restriction.

### **Next Steps**

The Department of State Treasurer anticipates distributing the first Final Divestment List on February 26, 2016. Once the List has been distributed, all Local Government Units should meet the contract certification requirements.

If you have questions about the Department of State Treasurer's Iran Divestment Policy, please contact Sharon Edmundson at [Sharon.Edmundson@nctreasurer.com](mailto:Sharon.Edmundson@nctreasurer.com) or 919-814-4289.



JANET COWELL  
TREASURER

NORTH CAROLINA  
DEPARTMENT OF STATE TREASURER  
INVESTMENT MANAGEMENT DIVISION

**FINAL DIVESTMENT LIST – IRAN**

*As of 26 February 2016*

Exercising the duties required under N.C.G.S. 143C-6A-4, the State Treasurer has determined that the following persons appear to be engaged in “investment activities in Iran,” as that term is defined in the North Carolina Iran Divestment Act of 2015, based on federal sanctions lists and other publicly available credible information.

The State Treasurer and North Carolina Retirement Systems may not invest funds with, and must divest any existing investment with, the persons listed below. N.C.G.S. 143C-6A-4.

Persons listed below are ineligible to contract with the State of North Carolina or any political subdivision of the State. N.C.G.S. 143C-6A-6. Any existing contracts with persons listed below shall be allowed to expire in accordance with the terms of the contract. N.C.G.S. 143C-6A-6(c).

The Department of State Treasurer is not responsible for compliance with the Iran Divestment Act by other agencies or political subdivisions of the State of North Carolina. The Department of State Treasurer’s responsibilities are solely focused on implementing G.S. 143C-6A-4, which relates to the Department’s investments, and implementing the Act as it relates to the identification of companies that appear to be engaged in investment activities in Iran.

**Companies listed as a result of their own apparent investment activities in Iran**

Listed Company	Country	Ticker
Chennai Petroleum Corporation Ltd	India	BSE:500110
China CSSC Holdings Limited	China	SHSE:600150
China Oilfield Services Ltd.	China	SEHK:2883
China Petroleum & Chemical Corp.	China	SEHK:386
China Shipbuilding Industry Company Limited	China	SHSE:601989
Daelim Industrial Co., Ltd.	South Korea	KOSE:A000210
Indian Oil Corporation Limited	India	BSE:530965
ITOCHU Corporation	Japan	TSE:8001
JNK Heaters Co., Ltd.	South Korea	KOSDAQ:A126880
Odfjell SE	Norway	OB:ODF
Oil and Natural Gas Corp. Ltd.	India	NSEI:ONGC
PetroChina Co. Ltd.	China	SEHK:857
PTT Global Chemical Public Company Limited	Thailand	SET:PTTGC
Sinopec Kantons Holdings Limited	Hong Kong	SEHK:934
The Siam Cement Public Company Limited	Thailand	SET:SCC
Welcron Kangwon Co., Ltd.	South Korea	KOSDAQ:A114190

The Act indicates that “persons” subject to the Act include not only companies listed as a result of their own apparent investment activities in Iran, as listed above, but also any “parent entity owning more than 20%” or

any “majority-owned subunit or subsidiary” of that company. N.C.G.S. 143C-6A-3(6) and 6A-4. Subsidiaries and parents of the companies listed above are found in the separate Iran Parent and Subsidiary Guidance list. This list can be found at the address [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran) on the State Treasurer’s website.

**FORM OF BID BOND**

KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_

as principal, and \_\_\_\_\_, as surety, who is duly licensed to act as surety in North Carolina, are held and firmly bound unto the City of Morganton through \_\_\_\_\_ as obligee, in the penal sum of \_\_\_\_\_ DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

WHEREAS, the said principal is herewith submitting proposal for and the principal desires to file this bid bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the principal shall be awarded the contract for which the bid is submitted and shall execute the contract and give bond for the faithful performance thereof within ten (10) days after the award of same to the principal, then this obligation shall be null and void; but if the principal fails to so execute such contract and give performance bond as required by G.S. 143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by G.S. 143-129.1.

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

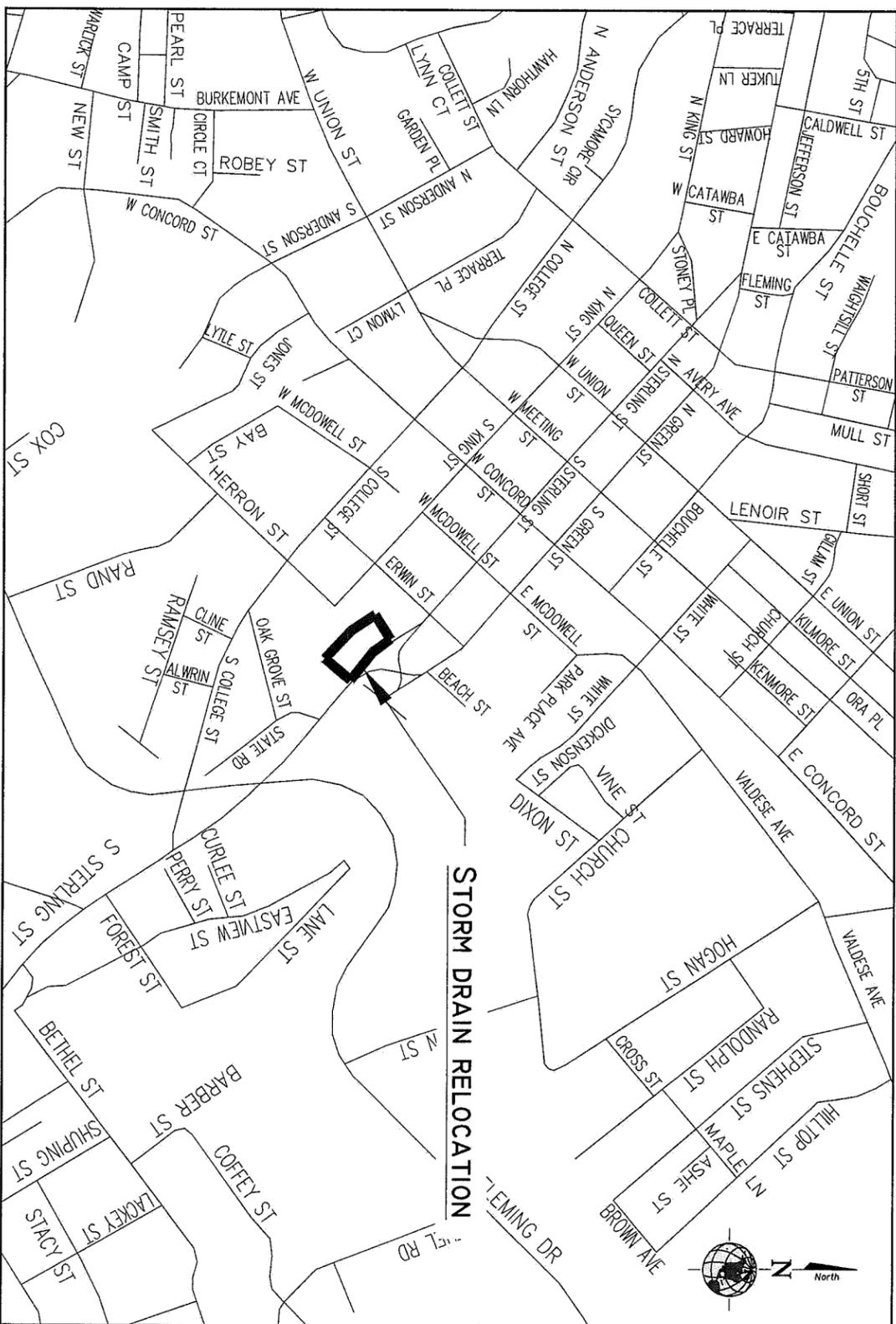
\_\_\_\_\_(SEAL)

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

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

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

# SOUTH STERLING STREET STORM DRAIN RELOCATION



VICINITY MAP

## CITY OFFICIALS

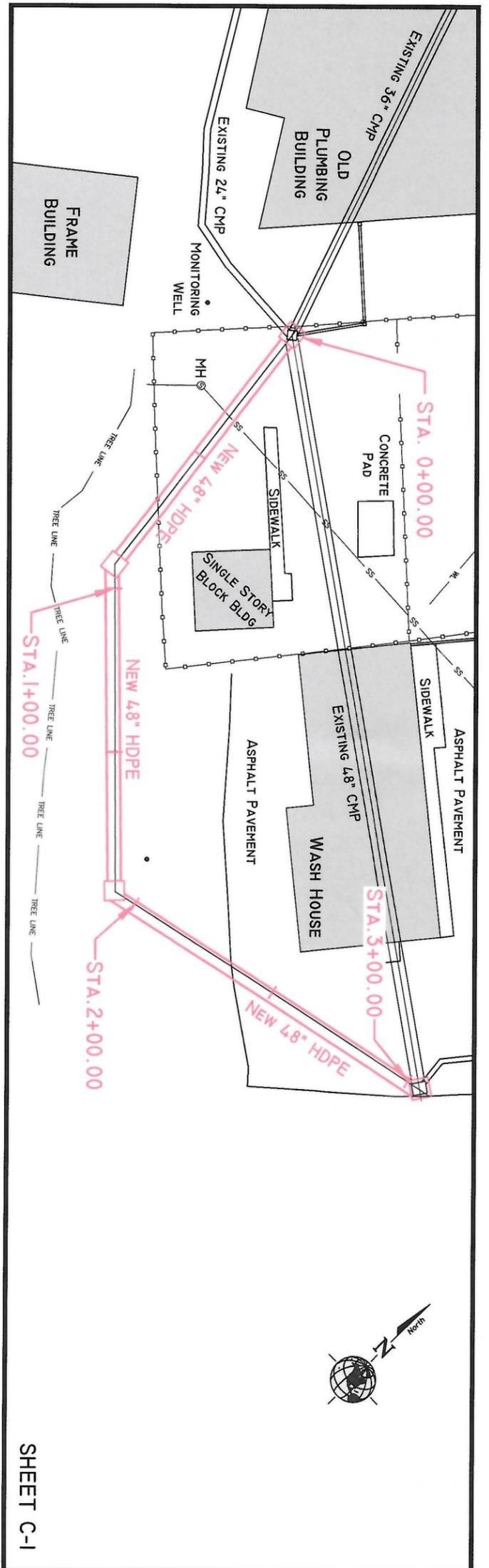
MAYOR  
MAYOR PRO TEM  
COUNCILMAN  
COUNCILMAN  
COUNCILMAN  
CITY MANAGER  
CITY ENGINEER  
DIR. DEVELOPMENT  
& DESIGN SERVICES

RONNIE THOMPSON  
JOHN CANTRELL  
FOREST FLEMING  
SIDNEY SIMMONS  
-VACANT-  
SALLY W. SANDY  
MARK A. YOUNG, P.E.

## DRAWING INDEX

COVER SHEET ----- COVER-1  
INDEX - NOTES - LEGEND ----- COVER-2  
STORM DRAIN PROFILE ----- C-1





**NOTES:**

1. APPROXIMATE TOTAL DISTURBED AREA .25 ACRES +/-.
2. CITY OF MORGANTON IS NOT RESPONSIBLE FOR ANY DIRT OR OTHER MATERIALS PLACED OUTSIDE OF THE CONSTRUCTION RIGHT-OF-WAY BY THE CONTRACTOR.
3. NOTIFY THE CITY OF MORGANTON BEFORE INTERRUPTING ANY UTILITY SERVICE.
4. ALL EXISTING UTILITIES ARE TO REMAIN IN SERVICE DURING ALL PHASES OF CONSTRUCTION.
5. UNDERGROUND UTILITY LOCATIONS WERE PROVIDED BY NCGICAL OR OTHERS AND WERE SURVEYED AND SHOWN ON THE DRAWINGS PLAN VIEW BY THE CITY OF MORGANTON PERSONNEL. UTILITY CROSSINGS SHOWN ON THE PROFILE ARE AT APPROXIMATE ELEVATIONS.
6. THE CITY OF MORGANTON ASSUMES NO LIABILITY AS TO THE ACCURACY OF THE LOCATION WORK.
7. ALL UTILITY COMPANIES ARE TO BE CONTACTED BY THE CONTRACTOR FOR MORE EXACT LOCATIONS OF UNDERGROUND UTILITIES PRIOR TO BID AND AGAIN BEFORE CONSTRUCTION.
8. ALL EXTRA WORK CAUSED BY LOCATION ERRORS OR OMISSION OF UNDERGROUND UTILITIES SHALL BE CONSIDERED INCIDENTAL AND NO COMPENSATION SHALL BE MADE TO THE CONTRACTOR FOR ANY REASON.
9. THE CONTRACTOR IS URGED TO PERFORM INVESTIGATIVE EXCAVATIONS PRIOR TO THE BID DATE IF HE DEEMS PRUDENT.

**CONSTRUCTION NOTES:**

1. ALL CUSTOM CATCH BASINS SHALL BE TRAFFIC RATED.
2. ALL CATCH BASIN LIDS, FRAME AND GRATES SHALL BE TRAFFIC RATED.
3. BACKFILLING OF CATCH BASINS AND PIPE SHALL BE PERFORMED IN 6 INCH LIFTS TO ACHIEVE PROPER COMPACTION.
4. ASPHALT PATCH AND REPAIR SHALL HAVE 6 INCH STONE BASE AND 2 INCH ASPHALT TOP COURSE.
5. CONTRACTOR SHALL MEET OSHA SAFETY REGULATIONS AT ALL TIMES.

**LEGEND**

WL	EXISTING WATERLINE	WL	EXISTING WATERLINE
12" WL	EXISTING 12" WATERLINE	12" WL	EXISTING 12" WATERLINE
6" WL	EXISTING 6" WATERLINE	6" WL	EXISTING 6" WATERLINE
SS	EXISTING SANITARY SEWERLINE	SS	EXISTING SANITARY SEWERLINE
15" SS	EXISTING 15" SANITARY SEWERLINE	15" SS	EXISTING 15" SANITARY SEWERLINE
8" SS	EXISTING 8" SANITARY SEWERLINE	8" SS	EXISTING 8" SANITARY SEWERLINE
OHP	EXISTING OVERHEAD POWER	OHP	EXISTING OVERHEAD POWER
UGE	EXISTING UNDERGROUND ELECTRICAL	UGE	EXISTING UNDERGROUND ELECTRICAL
SD	EXISTING UNDERGROUND TV	SD	EXISTING UNDERGROUND TV
TV	EXISTING UNDERGROUND TV	TV	EXISTING UNDERGROUND TV
OT	EXISTING OVERHEAD TELEPHONE	OT	EXISTING OVERHEAD TELEPHONE
UT	EXISTING UNDERGROUND TELEPHONE	UT	EXISTING UNDERGROUND TELEPHONE
GAS	EXISTING GAS	GAS	EXISTING GAS
SF	SILT FENCE	SF	SILT FENCE
D	EXISTING STORMDRAIN MANHOLE	D	EXISTING STORMDRAIN MANHOLE
S	EXISTING MANHOLE	S	EXISTING MANHOLE
EIR	EXISTING IRON REBAR	EIR	EXISTING IRON REBAR
ERP	EXISTING IRON PIPE	ERP	EXISTING IRON PIPE
WH	EXISTING WATER METER	WH	EXISTING WATER METER
PP	POWER POLE	PP	POWER POLE
RW	RIGHT-OF-WAY	RW	RIGHT-OF-WAY
GV	GATE VALVE AND BOX	GV	GATE VALVE AND BOX
FH	FIRE HYDRANT	FH	FIRE HYDRANT
CHP	CORRUGATED METAL PIPE	CHP	CORRUGATED METAL PIPE
HP	HIGH DENSITY POLYETHYLENE PIPE	HP	HIGH DENSITY POLYETHYLENE PIPE

**SOUTH STERLING STREET  
STORM DRAIN RELOCATION**

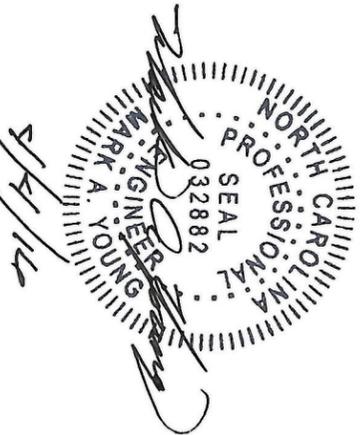
CITY OF MORGANTON, NORTH CAROLINA  
INDEX - NOTES - LEGEND

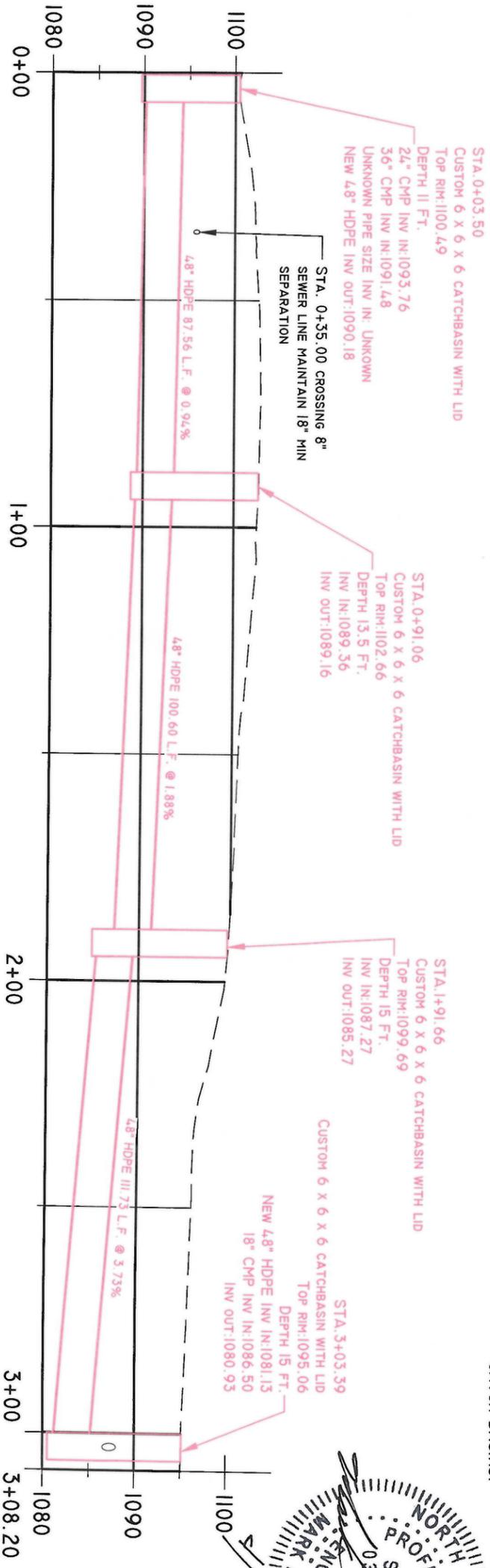
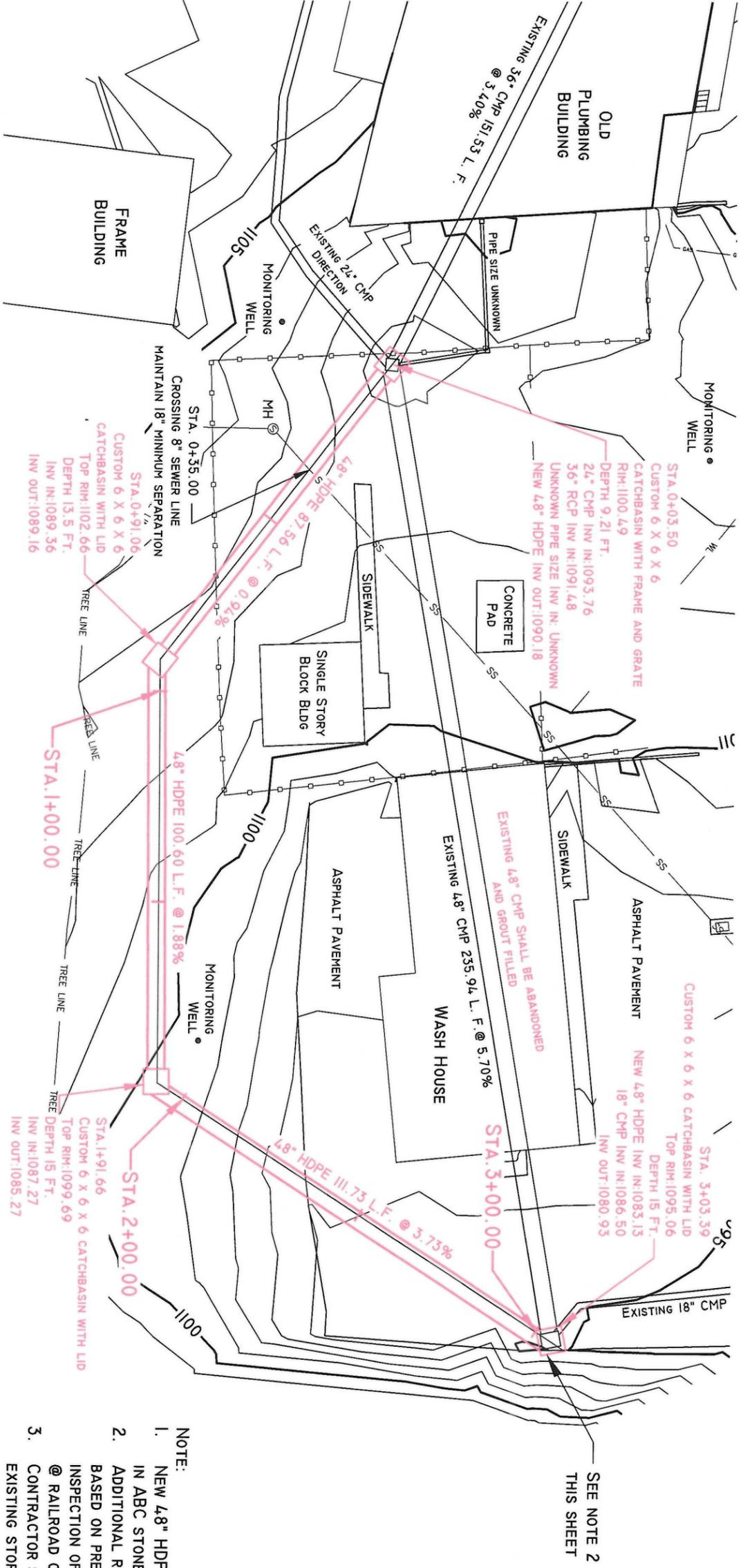
CITY OF MORGANTON

P. O. Box 3448  
MORGANTON, NC 28680  
(828) 438-5262

DRAWN BY: RLS  
CHECKED BY: MAY  
DATE: 4-1-16  
SCALE: NTS

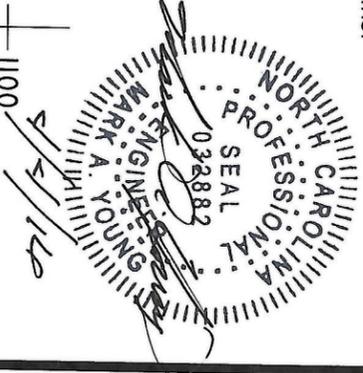
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DRAWING NO. FILE





- NOTE:
1. NEW 48" HDPE SHALL BE EMBEDDED IN ABC STONE.
  2. ADDITIONAL REPAIR MAY BE REQUIRED BASED ON PRELIMINARY VIDEO INSPECTION OF EXISTING CONDITIONS @ RAILROAD CULVERT.
  3. CONTRACTOR SHALL CONNECT ALL EXISTING STORM DRAIN LINES AT NEW CATCH BASINS.

SEE NOTE 2 THIS SHEET



<b>SOUTH STERLING STREET STORM DRAIN RELOCATION</b>		STA. 0+00.00 TO STA. 3+03.39 CITY OF MORGANTON, NORTH CAROLINA
<b>CITY OF MORGANTON</b> P.O. Box 3448 MORGANTON, NC 28680 (828) 438-5262	DRAWN BY: RLS	SHEET NO. C-1
	CHECKED BY: MAY	DRAWING NO. FILE
	DATE: 4-1-16	
	SCALE: 1" = 30'	