



Agenda

Greenville City Council

May 24, 2021

6:00 PM

This meeting will be virtual and conducted via Zoom. Please see the City's website (www.greenvillenc.gov) for details.

Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

I. Call Meeting To Order

II. Invocation - Council Member Daniels

III. Pledge of Allegiance

IV. Roll Call

V. Approval of Agenda

VI. Public Comment Period

The Public Comment Period is a period reserved for comments by the public. Items that were or are scheduled to be the subject of public hearings conducted at the same meeting or another meeting during the same week shall not be discussed. A total of 30 minutes is allocated with each individual being allowed no more than 3 minutes. Individuals who registered with the City Clerk to speak will speak in the order registered until the allocated 30 minutes expires. If time remains after all persons who registered have spoken, individuals who did not register will have an opportunity to speak until the allocated 30 minutes expires.

VII. Consent Agenda

1. Resolution Granting Electric Easements for the Use of Greenville Utilities Commission at Thomas Foreman Park
2. Request to Purchase Replacement Vehicles and Equipment for Various City Departments
3. Contract Award to Farrior & Sons, Inc. for the Construction of the Greenville Outdoor Aquatic Center at Thomas Foreman Park

VIII. New Business

4. Resolution approving a lease agreement with Boys and Girls Clubs of the Coastal Plain for a portion of the property (including school building and office building) at the Lucille W. Gorham Intergenerational Center

IX. City Manager's Report

X. Comments from Mayor and City Council

XI. Adjournment



City of Greenville, North Carolina

Meeting Date: 05/24/2021

Title of Item: Resolution Granting Electric Easements for the Use of Greenville Utilities Commission at Thomas Foreman Park

Explanation: The new Community Pool has been designed and will be constructed at Thomas Foreman Park, located at 400 Nash Street. There is a need to provide electrical service to the new facility which will require two new utility easements to be located within the property.


In order to provide the electrical service, Greenville Utilities Commission (GUC) is requiring two (2) separate Permanent Utility Easements; (1) one approximately thirty feet (30') in width, more or less, and (2) one approximately thirty-eight feet (38') in width, more or less, across Tax Parcel No. 28959. The easements have been surveyed and the associated legal description will be recorded with the Pitt County Register of Deeds.

The approval of this resolution, and granting of the easements, will allow for permitting and construction of the new Community Pool to continue and remain on schedule.

Fiscal Note: The approximate cost to map the easement is included in the new Community Pool Construction budget that was approved as part of Council's 2020-21 adopted budget.

Recommendation: Approve the attached resolution granting two utility easements for the use of GUC at Thomas Foreman Park for the construction of the new Community Pool.

ATTACHMENTS

-  [Resolution_Easement_to_GUC.pdf](#)
-  [All Utilities Easement PN 28959 - City of Greenville.pdf](#)

RESOLUTION

RESOLUTION AUTHORIZING GRANTING OF TWO UTILITY EASEMENTS FOR THE
USE OF THE GREENVILLE UTILITIES COMMISSION

WHEREAS, the City of Greenville (“City”) desires to provide electrical service related to the construction of the new Community Pool;

WHEREAS, in response Greenville Utilities Commission (“GUC”) requests the City to grant two utility easements on certain portions of Thomas Foreman Park (as described below);

WHEREAS, N.C.G.S. § 160A-273 authorizes the City to grant an easement across city property;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the granting of Two (2) separate Permanent Utility Easements; (1) one approximately thirty feet(30') in width, more or less, and (2) one approximately thirty-eight feet (38') in width, more or less, across Tax Parcel No. 28959 (according to the records in the Office of the Tax Administration of Pitt County, North Carolina) (Reference is hereby made to Deed Book H44 at Page 522 and Map Book 2 at Page 251, Pitt County Public Registry).

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the Mayor or City Manager is hereby authorized to execute the appropriate instruments necessary to grant the easement on the Property for the benefit of GUC.

This the 24th day of May, 2021.

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

Prepared by: Phillip R. Dixon, Attorney
File: Greenville Utilities Commission
Post Office Box 1847
Greenville, NC 27835

PN 28959

NORTH CAROLINA
PITT COUNTY

GRANT OF ALL UTILITIES EASEMENT
AND ACCESS EASEMENT FOR
INGRESS, EGRESS, AND REGRESS
DATE _____

KNOW ALL MEN BY THESE PRESENTS, that the undersigned "GRANTOR" (whether one or more), for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration to it in hand paid by GREENVILLE UTILITIES COMMISSION of the City of Greenville, Pitt County, North Carolina, 401 South Greene Street (PO Box 1847), Greenville, NC 27835-1847, hereinafter referred to as the "COMMISSION," the receipt of which is hereby acknowledged, does hereby grant the City of Greenville, a body politic and corporate in Pitt County, North Carolina, for use of the "COMMISSION," its licensees, successors and assigns, the right, privilege and easement to go in, through, under, and upon lands of the GRANTOR located in Greenville Township, Pitt County, North Carolina, and more fully described as follows:

Two (2) separate Permanent Utility Easements; (1) one approximately thirty feet (30') in width, more or less, and (2) one approximately thirty-eight feet (38') in width, more or less, across Tax Parcel No. 28959 (according to the records in the Office of the Tax Administration of Pitt County, North Carolina) (Reference is hereby made to Deed Book H44 at Page 522 and Map Book 2 at Page 251, Pitt County Public Registry).

Easement I - located by traveling from an Existing Iron Pipe (EIP) in the corner of the south right of way line of Fourth Street (49.5' Public R/W 36' B/B) and the existing west right of way line of Nash Street, N 84°48'02" W 194.01', more or less, to a point; thence N 84°48'02" W 30.35', more or less, to a point; thence N 84°48'02" W 216.53', more or less, to a point, the Point of Beginning; traveling thence from the Point of Beginning, S 19°59'14" W 78.09', more or less, to a point; cornering, thence N 70°00'46" W 30.00', more or less, to a point; cornering, thence N 19°59'14" E 70.17', more or less, to a point; cornering, thence S 84°48'02" E 31.03', more or less, to a point, the Point of Beginning, containing 2,223.9 square feet, more or less.

Easement II - located by traveling from an Existing Iron Pipe (EIP) in the corner of the south right of way line of Fourth Street (49.5' Public R/W 36' B/B) and the existing west right of way line of Nash Street, N 84°48'02" W 194.01', more or less, to a point, the Point of Beginning; traveling thence from the Point of Beginning, S 13°52'16" W 147.60', more or less, to a point; cornering, thence S 76°07'44" W 7.05', more or less, to a point; cornering, thence S 05°19'00" W 2.64', more or less, to a point; cornering, thence S 13°20'03" W 27.39', more or less, to a point; cornering, thence N 76°07'44" W 37.69', more or less, to a point; cornering, thence N 13°52'16" E 173.03', more or less, to a point; cornering, thence S 84°48'02" E 30.35', more or less, to a point, the Point of Beginning, containing 5,485.6 square feet, more or less.

All as is shown on that certain plat entitled "Easement Acquisition Map for Greenville Utilities Commission Property of: City of Greenville 400 Nash Street Greenville, N.C. 27834 Greenville, Greenville TWNSP., Pitt Co., N.C." dated April 28, 2021, prepared by Patrick W. Hartman, Professional Land Surveyor, License No. L-4262, Rivers & Associates, Inc., NC License: F-0334, 107 East Second

Street, Greenville, N.C. 27858, Phone (252) 752-4135, and denominated Drawing No: G-1255-X, which is marked Exhibit "A" and is attached hereto and made a part hereof, and to which reference is hereby made for a more particular and accurate description of the easement herein granted.

and to construct, install, operate and maintain utility facilities within such easement in a manner suitable to the Commission upon, across, under and through said premises within an easement and right of way strip of the width, location and approximate length hereinafter defined and to be utilized by the Commission a permanent easement and a temporary construction easement for the public use with the right to do all things necessary or convenient thereto, including the following:

- (a) the right of officers, agents, and workmen of the Commission and its contractors to go to and from said right of way strip at all times over the above described land by such route or routes as shall occasion the least practicable inconvenience to Grantor, including private roads and ways then existing thereon, on foot or by conveyance, with materials, machinery, supplies and equipment as may be desirable; provided that except in emergencies, existing roads and ways thereon shall be used to the extent that they afford ingress and egress to and from the right of way strip; and to construct, reconstruct, work upon, repair, alter, inspect and in general do any other thing necessary or convenient to maintain and operate said lines for the purpose aforesaid;
- (b) the right and privilege to enter upon the land included in the construction easement hereinabove described for the purpose of constructing said utility facilities, and the right and privilege at all times to enter upon the land included in the area of the permanent easement hereinabove described for the maintenance and repair of said utility facilities;
- (c) the right to clear, and keep cleared, from said right of way strip all structures (other than ordinary fences, but when Commission desires, such fences may be opened and reclosed or temporarily removed and replaced, or Commission may provide suitable gates therein) and all vegetation which may interfere with the utility facilities herein described and to use (1) chemicals which are not injurious to human beings, domestic animals, fish or game, (2) machinery, and (3) other forms of equipment and devices in so doing;
- (d) the right to install, construct, repair, maintain and operate all utility lines, structures and appurtenant facilities of the Commission.

The structures and appurtenant facilities installed by the Commission shall be and remain the property of the Commission and may be removed by it at any time and from time to time.

Grantor reserves the right to use the lands in and over which the right of way and easement rights are hereby granted for all purposes not inconsistent with said right of way and easement rights, except that Grantor agrees that (1) no buildings or permanent structures, wells, septic tanks, absorption pits, underground or overhead storage tanks, burial plots, or any other obstruction which might interfere with the construction, maintenance and operation of said utility facilities shall be placed within the area of said strip without the express written permission of the Commission; and (2) the Commission's facilities shall in no way be interfered with or endangered by the Grantor or Grantor's licensees, successors or assigns, without the express written permission of the Commission.

The Commission agrees that it will repair, rebuild, replace or pay the actual damages sustained as mutually agreed upon by the Commission and Grantor, and pay the actual damages to actual crops inside said right of way strip on the above land caused by the construction, operation, maintenance, inspection, rebuilding and removal of said lines, and in going to and from said right of way strip, and will repair any extraordinary damage to any bridge or to any road due to heavy hauling to and from the said right of way strip if claim is made within a period of thirty (30) days after such damages are sustained by Grantor.

Any notice to be given by one party to the other party hereunder may be delivered or deposited postage prepaid addressed to the following:

Grantor: City of Greenville
 P.O. Box 7207
 Greenville, North Carolina 27835

Commission: Greenville Utilities Commission
401 S. Greene Street
P.O. Box 1847
Greenville, North Carolina 27835

TO HAVE AND TO HOLD the aforesaid rights, privileges and construction easement unto the Grantee for such period of time as may be required to complete the construction of said utility facilities, and thereafter a permanent easement unto the Grantee and its successors, licensees and assigns for the uses and purposes hereinabove set forth.

And Grantor, for the Grantor and for the Grantor's heirs, executors, administrators, licensees, successors and assigns, covenants to and with the Commission, its licensees, successors and assigns, that Grantor is lawfully seized of the above described land in fee and has the right to convey the said rights, easements and privileges herein described; that the same is free and clear from any and all encumbrances not satisfactory to the Commission; that the Commission shall have quiet and peaceful possession, use and enjoyment of the aforescribed easement of right of way, rights and privileges; that the Grantor shall execute such further assurances thereof as may be required by the Commission; and Grantor will forever warrant and defend the title to the said easement of right of way, rights and privileges against the lawful claims of all persons whomsoever.

The singular shall include the plural and reference to gender shall include masculine, feminine and neuter.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed in its corporate name by its duly authorized corporate officers, duly attested and its corporate seal hereunto affixed, all by authority of its Board of Directors duly given, this the day and year first above written.

CITY OF GREENVILLE, NORTH CAROLINA

By: _____
P.J. Connelly, Mayor

Attest:

Valerie Shiuwegar, Clerk

[SEAL]

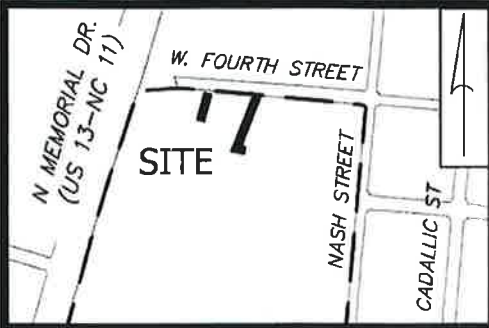
NORTH CAROLINA
PITT COUNTY

I, _____, a Notary Public of the aforesaid County and State, certify that Valerie Shiuwegar personally came before me this day and acknowledged that she is the Clerk of the City of Greenville, North Carolina, and that by authority duly given and as the act of the City of Greenville, North Carolina, the foregoing instrument was signed in its name by its Mayor, P.J. Connelly, sealed with its seal and attested by her as its Clerk.

WITNESS my hand and seal, this the _____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires: _____



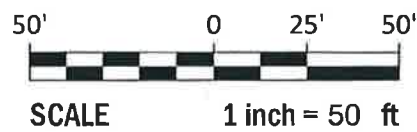
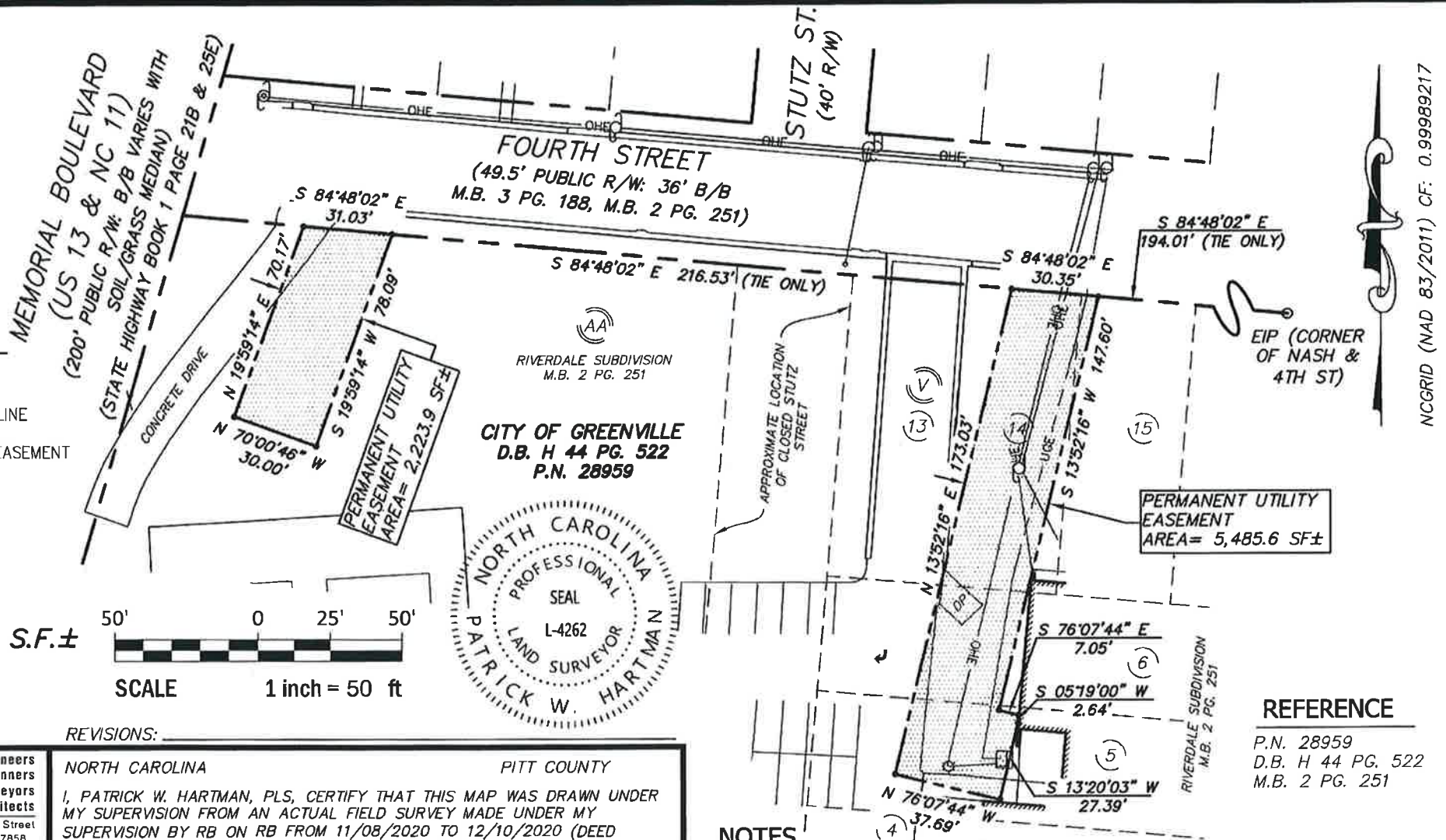
VICINITY MAP (NOT TO SCALE)

LEGEND

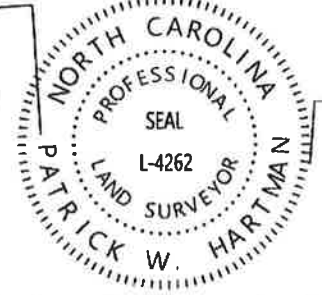
- RIGHT OF WAY (R/W)
- PROPOSED EASEMENT
- OVERHEAD ELECTRIC LINE
- PERMANENT UTILITY EASEMENT
- D.B. DEED BOOK
- M.B. MAP BOOK
- PG. PAGE
- P.N. PARCEL NUMBER
- EIP O EX. IRON PIPE

TOTAL PERMANENT UTILITY EASEMENT AREA = 7,709.5 S.F.±

SHEET 1 OF 1
DRAWING NO. G-1255-X
SCALE 1" = 50' DRAFT: KB/PH



SCALE 1 inch = 50 ft



REVISIONS:

NORTH CAROLINA PITT COUNTY

I, PATRICK W. HARTMAN, PLS, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION BY RB ON RB FROM 11/08/2020 TO 12/10/2020 (DEED DESCRIPTIONS RECORDED IN BOOKS REFERENCED HEREON); THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED HEREON; THAT THE RATIO OF PRECISION IS 1:10,000+. THAT NORTH BASIS AND COORDINATES LISTED WERE DERIVED FROM MULTIPLE NCGS RTN OBSERVATIONS ON SURVEY; CLASS A SURVEY WITH A POSITIONAL ACCURACY OF 2 CM. I FURTHER CERTIFY PURSUANT TO G.S. 47-30(f)(11)c.4. THAT THIS SURVEY IS OF A PROPOSED EASEMENT FOR A PUBLIC UTILITY AS DEFINED IN G.S. 62-3. WITNESS MY ORIGINAL SIGNATURE LICENSE NUMBER AND SEAL THIS 28th DAY OF APRIL, 2021.

PROFESSIONAL LAND SURVEYOR LICENSE NO. L-4262

REFERENCE

P.N. 28959
D.B. H 44 PG. 522
M.B. 2 PG. 251

NOTES

1. ALL DISTANCES ARE HORIZONTAL GROUND MEASUREMENTS; AREA DETERMINED BY COORDINATES; NO POINTS SET UNLESS OTHERWISE INDICATED.
2. PROPERTY IS SUBJECT TO ANY EASEMENTS, RIGHT-OF-WAYS, AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD.
3. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE COMMITMENT REPORT. RIVERS AND ASSOCIATES, INC. DOES NOT CLAIM THAT ALL MATTERS OF RECORD WHICH MAY OR MAY NOT AFFECT THE SUBJECT PROPERTY ARE SHOWN HEREON.
5. REFERENCE RIVERS AND ASSOCIATES DRAWING E-359 FOR COMPLETE TOPOGRAPHIC AND PLANIMETRIC INFORMATION.

NC License F-0334

Rivers & Associates, Inc.

Engineers, Planners, Surveyors, Landscape Architects

107 East Second Street
Greenville, NC 27858
(252) 752-4135

EASEMENT ACQUISITION MAP FOR:
GREENVILLE UTILITIES COMMISSION
PROPERTY OF:
CITY OF GREENVILLE

400 NASH STREET
GREENVILLE, N.C. 27834
GREENVILLE, GREENVILLE TOWNSHIP, PITT COUNTY, N.C.

NCGRD (NAD 83/2011) CF: 0.99989217



City of Greenville, North Carolina

Meeting Date: 05/24/2021

Title of Item: Request to Purchase Replacement Vehicles and Equipment for Various City Departments

Explanation: The Public Works Department is requesting the purchase of 33 replacement vehicles and/or equipment for various City departments at a cost of \$2,725,514. The replacement vehicles/equipment will be funded utilizing monies available in the FY 2021 Vehicle Replacement Fund. These vehicles and equipment have met the replacement criteria set by the City Replacement program. These items will be purchased through the following contracts:

Houston-Galveston Area Cooperative Purchasing Program:

(1) Ford E450 Ultramedic Rescue Truck (Ambulance) – Replacing #7080

NC Sheriff's Association Contract:

(2) Mack TE Front Loaders – Replacing #'s 7025, 8032

(1) Schwarze Hypervac Sweepers – Replacing # 8267

(1) International Leaf Collector – Replacing #7049

(1) International Heil Rear Loader – Replacing #7048

(3) Ford Expeditions (EMS rapid response units) – Replacing #'s 8173, 8175, 8049

(7) Ford Interceptors – Replacing #'s 8052, 8053, 8055, 8100, 10104, 10149, 10277

(4) Dodge Charger Pursuits (Transport) – Replacing #'s 6602, 6965, 7058, 8141

(7) Dodge Charger Pursuits – Replacing #'s 8087, 8136, 8140, 8143, 8149, 8195, 10012

(1) John Deere 3033R Compact Tractor – Replacing #5493

(2) Ford F150 Pickup Truck – Replacing #'s 6796, 5876

(1) Ford Rangers – Replacing # 7003

A list of the proposed replacement vehicles/equipment is included with the agenda item.

Fiscal Note: Funding for these purchases will come from the Vehicle Replacement Fund (VRF) with budget appropriations transferred from the following funding sources:

General Fund: \$1,380,126.77

Sanitation Fund: 1,056,289.00

Stormwater Fund: 289,098.00

Recommendation: City Council approve the purchase of the 33 vehicles/equipment as listed using the Vehicle Replacement Fund.

ATTACHMENTS

 [VRF May 2021.pdf](#)

Proposed Vehicle Replacements- May 2021

Asset #	Model Year	Existing Manufacturer ID	Existing Description	Existing Model ID	Replacement Vehicle Type	Existing Vehicle Purchase Year	Exp. Life	Original Cost	Replacement Vehicle Cost	Life Cycle Status Code ID	Life Total Meter1	Total Maintenance Cost	Replacement Fund	Department
7080	2015	FORD	RESCUE TRUCK	E450	2022 Ford E450 Ultramedic	2/5/2016	6	\$184,912.00	\$349,792.00	A	105,312	\$60,023.79	General Fund	Fire/EMS
7025	2011	MACK	FRONT LOADER	MRU613	2022 Mack TE Front Loader 28yrd	8/16/2010	8	\$191,558.00	\$302,425.00	A	69,374	162,617.36	Sanitation	PWD Solid Waste
8032	2012	PETERBILT	FRONT LOADER	320	2022 Mack TE Front Loader 28yrd	12/9/2011	7	\$216,000.00	\$302,425.00	A	67,404	98,913.31	Sanitation	PWD Solid Waste
8267	2015	FREIGHTLINER	SWEEPER	M2106	2021 Schwarze Hypervac	1/13/2015	7	\$261,621.00	\$289,098.00	A	35,916	\$122,641.69	Storm	PWD - SW
7049	2011	INTERNATIONAL	REAR LOADER	7400	2021 International Leaf Collector	1/19/2011	7	\$134,511.00	\$273,089.00	A	73,737	\$103,492.08	Sanitation	PWD Solid Waste
7048	2011	INTERNATIONAL	REAR LOADER	7400	2021 International Heil Rear Loader	1/19/2011	7	\$134,511.00	\$178,350.00	A	72,766	\$105,878.24	Sanitation	PWD Solid Waste
8173	2014	CHEVROLET	SPORT UTILITY	TAHOE-4WD LS	2022 Ford Expedition	9/17/2013	10	\$39,975.38	\$52,326.06	A	132612	\$54,776.91	General Fund	Fire/EMS
8175	2014	CHEVROLET	SPORT UTILITY	TAHOE-2WD LS	2022 Ford Expedition	7/31/2013	10	\$35,888.51	\$52,326.06	A	127217	\$37,033.34	General Fund	Fire/EMS
8049	2012	CHEVROLET	SPORT UTILITY	TAHOE-4WD LS	2022 Ford Expedition	3/20/2012	10	\$43,000.00	\$52,326.06	A	107652	\$33,147.72	General Fund	Fire/EMS
10277	2018	FORD	SPORT UTILITY	EXPLORER-POLICE	2021 Ford Interceptor Patrol	3/20/2019	5	\$52,517.54	\$43,416.00	LOSS	22,016	\$12,341.39	General Fund	PD
10104	2017	FORD	SPORT UTILITY	EXPLORER-POLICE	2021 Ford Interceptor Patrol	5/1/2017	5	\$49,668.21	\$43,416.00	LOSS	34,337	\$4,520.81	General Fund	PD
10149	2017	FORD	SPORT UTILITY	EXPLORER-POLICE	2021 Ford Interceptor Patrol	12/8/2017	5	\$50,119.40	\$43,416.00	LOSS	25,336	\$9,510.18	General Fund	PD
8100	2013	CHEVROLET	SPORT UTILITY	TAHOE-2WD LS	2021 Ford Interceptor K9	7/17/2012	8	\$43,000.00	\$43,416.00	A	125,941	\$24,701.18	General Fund	PD
8053	2012	CHEVROLET	SPORT UTILITY	TAHOE-2WD LS	2021 Ford Interceptor K9	3/20/2012	5	\$43,500.00	\$43,416.00	A	116,356	\$35,668.05	General Fund	PD
8055	2012	CHEVROLET	SPORT UTILITY	TAHOE-2WD LS	2021 Ford Interceptor K9	3/20/2012	5	\$45,500.00	\$43,416.00	A	108,690	38,674.67	General Fund	PD
8052	2012	CHEVROLET	SPORT UTILITY	TAHOE-2WD LS	2021 Ford Interceptor K9	3/20/2012	5	\$43,500.00	\$43,416.00	A	97,744	\$29,884.45	General Fund	PD
8141	2013	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit/Transport	11/30/2012	5	\$35,500.00	\$36,542.79	A	128,516	\$27,287.79	General Fund	PD
7058	2011	FORD	SEDAN	CROWN VICTORIA	2021 Dodge Charger Pursuit/Transport	1/19/2011	5	\$26,068.00	\$36,542.79	LOSS	114,900	\$22,352.42	General Fund	PD
6965	2010	FORD	SEDAN	CROWN VICTORIA	2021 Dodge Charger Pursuit/Transport	11/17/2009	5	\$21,756.00	\$36,542.79	A	142,286	\$24,612.16	General Fund	PD
6602	2006	FORD	SEDAN	CROWN VICTORIA	2021 Dodge Charger Pursuit/Transport	3/29/2006	5	\$23,000.00	\$36,542.79	A	124,394	20,522.14	General Fund	PD
10012	2016	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit	4/19/2016	5	\$34,505.73	\$35,011.00	LOSS	39,759	\$15,710.21	General Fund	PD
8195	2014	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit	8/23/2013	5	\$35,245.44	\$35,011.00	A	118,600	\$22,925.57	General Fund	PD
8140	2013	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit	11/30/2012	5	\$35,500.00	\$35,011.00	A	109,012	\$41,688.42	General Fund	PD
8087	2013	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit	7/1/2012	5	\$35,500.00	\$35,011.00	A	83,332	18,017.25	General Fund	PD
8136	2013	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit	11/30/2012	5	\$35,500.00	\$35,011.00	LOSS	93,000	\$31,612.17	General Fund	PD
8143	2013	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit	11/30/2012	5	\$35,500.00	\$35,011.00	LOSS	80,999	\$7,593.36	General Fund	PD
8149	2013	FORD	SEDAN	TAURUS-POLICE I	2021 Dodge Charger Pursuit	11/30/2012	5	\$35,500.00	\$35,011.00	LOSS	73,473	\$12,825.83	General Fund	PD
5493	2003	JOHN DEERE	790	TRACTOR	2021 John Deere 3033R Compact	7/1/2013	8	\$10,499.92	\$32,392.73	A	2292	\$6,210.31	General Fund	Parks
6796	2008	FORD	PICKUP TRUCK	F150-XL	2021 Ford F150	6/27/2008	10	\$14,500.00	\$29,758.35	A	109,665	18,139.24	General Fund	PWD B&G
5876	2004	CHEVROLET	PICKUP TRUCK	SILVERADO-1500	2021 Ford F150	3/3/2004	10	\$11,494.00	\$29,758.35	A	81,486	17,013.11	General Fund	PWD B&G
7003	2010	TOYOTA	SEDAN	PRIUS-II MODEL	2021 Ford Ranger	5/26/2010	8	\$21,898.00	\$26,877.99	A	62001	\$21,422.21	General Fund	PD (Parking)
4884	2001	JOHN DEERE	GATOR	UTILITY VEHICLE	2021 John Deere Gator	7/1/2001	10	\$6,072.48	\$24,398.01	A	856	15,939.72	General Fund	Parks
6601	2006	FORD	SEDAN	CROWN VICTORIA	2021 Dodge Charger Pursuit	3/29/2006	5	\$23,000.00	\$35,011.00	A	100,981	27,803.23	General Fund	PD
Total									\$2,725,513.77					



City of Greenville, North Carolina

Meeting Date: 05/24/2021

Title of Item: Contract Award to Farior & Sons, Inc. for the Construction of the Greenville Outdoor Aquatic Center at Thomas Foreman Park

Explanation: The City of Greenville currently has one outdoor, public swimming pool facility that is located at 2113 Myrtle Avenue in Guy Smith Park. The facility is approximately 49 years old and has reached the end of its useful life. In November of 2020, the City contracted with Kimley-Horn and Associates to design a new aquatic facility within Thomas Foreman Park located at 400 Nash Street.

The Recreation and Parks Department is now seeking to award a construction contract to build the new aquatic facility and make improvements to the Eppes Recreation Center parking lot. The primary scope of work will include the construction of a new pool that includes six competition lap lanes, a recreation pool area, a zero-entry children's area with a play structure, a 16' water slide, a bathhouse, and an expanded parking area.

An Advertisement for Bids was published on April 19, and bids were due May 13. The lowest responsible, responsive bidder was Farior & Sons with a total bid of \$3,392,000. The City has previously had experience with Farior & Sons in relation to capital projects completed within Public Works and Recreation & Parks. In addition, the sub-contractors engaged by Farior & Sons to complete this project have previous experience in the construction of municipal aquatic centers. Kimley-Horn will provide project management of the pool construction as included in the approved design contract. The City's Recreation & Parks Planner will also be providing oversight of the pool construction.

Other submitted bids are as follows: Daniels & Daniels: \$3,722,847 and Wharton-Smith: \$3,951,648

Construction of the new pool is planned to begin in June 2021 and conclude by May 13, 2022. The anticipated opening date of the pool is June 4, 2022.

Fiscal Note: The amount of the construction contract shall not exceed \$3,392,000, and includes Liquidated Damages if construction target dates are not met. With design and a 15% construction contingency, the total projected project cost is approximately \$4,250,800. The City had established a budget for the project at approximately \$4,500,000. Funding to finance the improvements was included in the Council Adopted Fiscal Year 2020-21 City Budget.

Recommendation: Staff recommends City Council award the construction contract for the Greenville Outdoor Aquatic Center to Farrior & Sons, Inc. in the amount of \$3,392,000.

ATTACHMENTS

 [Bid Recommendation Letter.pdf](#)

 [1147403 - Greenville Outdoor Aquatic Center Contract - 1 - COG.DOCX](#)



May 14, 2021

Mark Nottingham, AICP
Parks Planner
City of Greenville
401 S. Johnstone Ave
Greenville, NC 74003

Via Email: mnottingham@greenvillenc.org

RE: Outdoor Aquatic Facility Greenville, NC
Bid Recommendation Letter

Dear Mr. Nottingham:

On Thursday, May 13, 2021 bids were received at the Greenville Parks and Recreation Administrative Offices at 2:00 PM and publicly opened and read with all bidders in attendance.

Prior to the bid opening and based on the pre-bid meeting, we were hopeful that there would be four general contractors bidding on this project. Three bids were received from general contractors (Farrior & Sons, Daniels & Daniels, and Wharton-Smith). Muter Construction attended the bid opening but left prior the opening stating that they could not get an electrical price so they could regretfully could not complete their bid.

The construction market has been volatile with fluctuating material pricing and Kimley-Horn and the City of Greenville appreciate the interest and bids provided by all supplier and contractors for this important project for the citizens of Greenville, NC.

The bids were opened and based on the bids received, Farrior & Sons is the apparent low bidder and all bids were within the budget allocated for this project.

All bidders listed Augusta Aquatics as the pool builder and Kimley-Horn is familiar with Augusta Aquatics from multiple prior projects including the Holding Park Pool in Wake Forest, NC and the Greenview Park Pool in Columbia, SC. We understand that the low bidder Farrior & Sons is a local contractor and the City has experience with them on other projects. They confirmed following the bid that they are ready and able to do this project and look forward to working with the City again.

Therefore, we can see no reason at this time not to award to the bid to Farrior & Sons.

Sincerely,

Mark C. Hatchel, ASLA, PLA
Vice-President and Senior Project Manager

PROJECT MANUAL FOR
Greenville Outdoor Aquatic Center



RECREATION AND PARKS

Recreation and Parks Department

2000 Cedar Lane
Greenville, NC 27835
252-329-4567

Project Manager
Mark Hatchel, PLA, ASLA
13455 Noel Road, Two Galleria Tower, Suite 700
Dallas, Texas 75240
(469) 914 8722

Project Engineer
John Kuzenski, P.E.
421 Fayetteville Street, Suite 600
Raleigh, Raleigh North Carolina 27601
(919) 653 2990

April 2021

100 % CONSTRUCTION DOCUMENTS



Greenville Outdoor Aquatic Center GREENVILLE, NORTH CAROLINA

CONTRACT AND SPECIFICATIONS CITY OF GREENVILLE, NORTH CAROLINA

MAYOR: P. J. CONNELLEY

COUNCIL MEMBERS:
ROSE H. GLOVER
BRIAN MEYERHOEFFER
MONICA DANIELS
WILL BELL
RICK SMILEY
WILL LITCHFIELD

CITY MANAGER: ANN E. WALL

CITY ATTORNEY: EMANUEL D. MCGIRT

CITY CLERK: VALERIE SHIUWEGAR

Kimley-Horn and Associates, Inc.
(Project Management and Site Development)
13455 Noel Road, Two Galleria Tower, Suite 700
Dallas, Texas 75240
(469) 914 8722
421 Fayetteville Street, Ste. 600
Raleigh, North Carolina 27601

Project Contact: Mark Hatchel, PLA, ASLA
mark.hatchel@kimley-horn.com

Councilman-Hunsaker
(Swimming Pool)
10733 Sunset Office Drive, Suite 400
Saint Louis, Missouri 63127
Phone: (314) 894-1245
Fax: (314) 894-0109
Contact: Jeff Nordorf, P.E.

Osterlund Architects, PLLC
(Architectural)
5 W. Hargett Street #310
Raleigh, North Carolina 27601
Phone: (919) 838-9337
Contact: Kristen Osterlund, AIA,
LEED, AP BD+C

Hurst Engineers
(MEP/HVAC)
308 Hillwood Avenue
Falls Church, Virginia 22046
Phone: (940) 427-8487
Fax: (940) 427-8499
Contact: Jim Weathers (Engineering Assoc.)

The Core Group
(Pool Structural Design)
Northwest Regional Airport
102 Lindberg Drive
Roanoke, Texas 76262
Phone: (817) 854-0142
Contact: Trent Cragin

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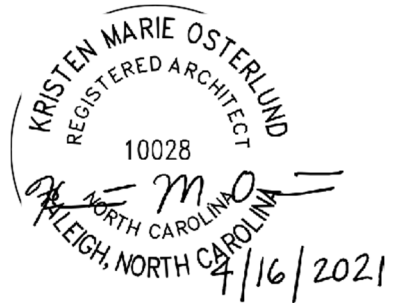


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GREENVILLE OUTDOOR AQUATIC CENTER

COUNCILMAN HUNSAKER - AQUATICS CONSULTANTS
100% Construction Documents - April 2021

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PART I

BIDDING REQUIREMENTS

ADVERTISEMENT FOR BIDS

The Greenville Recreation and Parks Department (GRPD) will accept bids for the Greenville Outdoor Aquatic Center construction project, beginning **May 6, 2021**. SEALED, SINGLEPRIME BIDS from qualified bidders will be received by the City in the offices of Recreation and Parks, 2000 Cedar Ln. Greenville, NC 27858, at **2:00 pm (Eastern Standard Time) on May 6, 2021, and publicly opened thereafter at 2:05 pm**. Bids shall be marked "SEALED BID", addressed to the attention of Mr. Mark Nottingham, Greenville Recreation and Parks Department, and shall include the Name, Address, and License Number of the bidder, and the type proposal enclosed. The MANDATORY Pre-Bid Meeting will be held April 27, 2021 at 2:00 PM.

Each bidder must show evidence that they are licensed under Chapter 87 of the N.C. General Statutes. Bid, and performance and payment bonds are required.

General Description of the work:

The work includes all labor, equipment, and materials to complete in every detail of the work indicated on the plans and specifications. Specifically, all work incidental thereto Greenville Outdoor Aquatic Center including, but not limited to, demolition, earthwork, site utilities, drainage, paving improvements, masonry walls and tower construction, and plantings.

MBE/WBE PARTICIPATION

The goal for Minority and / or Women Business Enterprise (M/WBE) participation is MBE 10% and WBE 6%. Each goal must be met separately. Exceeding one goal does not satisfy requirements for the other.

CONTRACT DOCUMENTS (plans and specifications) may be examined at the following locations:

- McGee Cadd Reprographics, 2029 Evans Street, Greenville, NC 27834.

Copies of the CONTRACT DOCUMENTS may be obtained from McGee Reprographics or electronically via the Greenville Recreation and Parks Department. For information, contact Mark Nottingham at 252-329-4242 or mnottingham@greenvillenc.gov.

Each proposal shall be accompanied by a bid bond executed by a corporate security licensed to do so under North Carolina law, of an amount equal to not less than five percent (5%) of the proposal, or in lieu thereof, a bidder may offer a certified check on a bank or trust company insured by the Federal Deposit Insurance Corporation. Each bidder's deposit, except for the bidder to whom the contract is awarded, shall be returned after the contract awarded. The City shall retain the bid deposit of the bidder to whom the contract is awarded if the bidder fails to execute the contract within ten days after the award.

To whom the contract is awarded, a Performance and Payment Bond will be required for one hundred percent (100%) of the contract price.

No bid may be withdrawn after the scheduled closing time for the receipt of bids for a period of 60 days after the bid date.

The City Council of the City of Greenville reserves the right to reject any or all proposals.

SIGNED:

Mark Nottingham
City of Greenville Recreation and Parks Department 2000 Cedar Lane
Greenville, NC 27858

INSTRUCTIONS TO BIDDERS

1. Bids will be received for Single Prime Contract. All proposals shall be for lump sum. It is the intent of the City to award this bid to the lowest responsive and responsible bidder.
2. Bidders are requested to return bids to the City of Greenville Recreation and Parks Department prior to bid opening. Bids will be opened promptly at the time specified in the Invitation to Bid. Bidders are cautioned to be prompt since No Bids Will Be Accepted after the time designated for the bid opening. The precise time will be monitored by the by the person responsible for opening the bids.
3. All bids submitted must be on the blank proposal forms herein provided and prices given shall be both in writing and figures and the complete form shall be without any lineation, alterations, or erasures. In case of conflicting prices, the written prices shall govern.
4. Bids shall be enclosed in a sealed envelope, directed to the City of Greenville, Recreation and Parks Department, 2000 Cedar Lane, Greenville, North Carolina 27858, and marked with the bidder's North Carolina Contractor's License number. All bids must be marked Bid on the outside of the envelope.
5. Each proposal shall contain the full name and address of each bidder. When firms bid, the name of each member shall be signed and the firm name added, and the execution shall be done as more specifically stated herein under the following section.
6. The omission of prices upon any item for which bids are asked or the tendering of an unbalanced bid will be the cause of the rejection of the bid submitted.
7. No bid shall be considered or accepted by the City unless at the time of its filing, it is accompanied by a deposit of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the bid. In lieu of making that deposit, the bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the City of Greenville upon the bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained by the City if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory bonds or deposit as required herein. The bidder to whom the award of contract is made shall either (a) furnish bonds as required by Article 3 of Chapter 44A of the N.C. General Statutes, using the form supplied by the City; or (b) deposit with the City money, certified check or government securities. The bonds or deposit shall be for the full amount of the contract to secure the faithful performance of the terms of the contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44 AINSTRUCTIONS TO BIDDERS
8. General Contractors are notified that Chapter 87, Article 1, General Statutes of North Carolina will be observed in receiving and awarding general contracts. General contractors submitting bids on this project must have license classification for general contractor.

NOTE: Under GS 87-1, a contractor that superintends or manages construction of any building, highway, public utility, grading, structure, or improvement shall be deemed a "general contractor" and shall be so licensed. Therefore, a single prime project that involves other trades will require the single prime contractor to hold a proper General Contractors license.

9. Except to the extent allowed by statute, bids shall not be withdrawn, and bids shall remain subject to acceptance by the City for a period of 90 days.

10. Bidders must present satisfactory evidence that they have been regularly engaged in the business of constructing such work, and that they are fully prepared with the necessary capital, equipment, etc., to begin the work promptly, and complete the same in accordance with specifications.
11. The bids will be evaluated, and the contract awarded in accordance with statutory public contract requirements as supplemented or altered by the Minority and / or Women Business Enterprise (M/WBE) requirements supplied with this bid package. These forms must be filled out and returned with the bid proposal. Any bids submitted without these completed forms shall be deemed as “non-responsive”. If there are any questions or problems in filling out these forms, please contact:

Denisha Harris, Financial Services Manager
(252) 329-4862
12. The successful bidder is required to commence work within ten (10) written days after written notice from the Project Manager. Termination of work shall also be controlled by the City of Greenville.
13. The contractor will furnish all materials, labor, equipment, supervision, tools, machinery, etc. for complete construction of projects in accordance with plans and specifications of the City of Greenville.
14. The bidder to whom the award is made shall be required to furnish work crew of adequate number, size, and experience to properly perform the work. The interpretation of the number of crews, size, and experience will be determined by the City of Greenville as to their adequacy.
15. It shall be the contractor’s responsibility to obtain all necessary and required permits and inspections. These permits shall be presented upon demand.
16. The Contractor will perform, or have performed, all necessary site layout (both lines and grades) for this construction.
17. The Contractor must provide the City of Greenville a safety plan of their organization, prior to approval of the contract
18. The following standard documents shall be used for their intended purposes unless the Owner consents to use other forms:
 - Standard Form of Agreement Between Owner and Contractor
 - General Conditions of the Contract for Construction.
19. The contractor(s) to whom the award is made must carry insurance in the amounts and types outlined in the Insurance Requirements section of this document.
20. The insurance herein required shall be with an insurance company authorized to do business in North Carolina and having a BEST rating of A or better.
21. Insurance shall be evidenced by a certificate:
 - Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
 - Certificates should be addressed to:

City of Greenville, North Carolina
Attn: Mark Nottingham
P.O.Box 7207
Greenville, NC 27835

Insurance

The Company agrees to purchase at its own expense insurance coverages to satisfy the following minimum requirements. A certificate reflecting the following minimum coverages shall accompany this Agreement:

Workers’ Compensation Insurance:

Limits:

Workers Compensation: Statutory for the State of North Carolina

Employers Liability: Bodily Injury by Accident \$1,000,000 each accident

Bodily Injury by Disease \$1,000,000 policy limit

Bodily Injury by Disease \$1,000,000 each employee.

No sub-contractor may exclude executive officers. Workers Compensation must include all employees.

Commercial General Liability:

Limits:

Each Occurrence:	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The aggregate limit must apply per project. The form of coverage must be the ISO CG 00 01 policy as approved by the State of North Carolina Department of Insurance. If a form of coverage other than the CG 00 01 is used it must be approved by the City. Any endorsed exclusions or limitations from the standard policy must be clearly stated in writing and attached to the Certificate of Insurance. Completed Operations coverage must be maintained for the period of the applicable statute of limitations.

The City must be added as an Additional Insured to the Commercial General Liability policy.

Commercial Automobile Liability:

Limits:

\$1,000,000 combined single limit.

The City must be added as an Additional Insured on the Commercial Auto Liability policy.

All insurance companies must be admitted to do business in North Carolina and be acceptable to the City. If the insurance company(s) is a permitted surplus lines insurer, the insurance company name, and NAIC number must be submitted to the City’s Risk Manager for approval before commencing work. Company shall be required to provide the City no less than thirty (30) days’ notice of cancellation, or any material change, to any insurance coverage required by this

Agreement.

A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified.

The City's review or acceptance of Certificates of Insurance shall not relieve the Company of any requirement to provide the specific insurance coverages set forth in the Agreement. Nor shall the City's review or acceptance of Certificates of Insurance constitute a waiver of the specific insurance coverage requirements set forth in the Agreement or acknowledgement that all insurance coverage requirements set forth in the Agreement have been met.

Hold Harmless and Indemnity Agreement:

To the fullest extent permitted by law, Company shall indemnify and hold harmless the City, its employees, agents, and consultants against any liability arising out of or in connection with any of the operations or obligations of Company, including but not limited to any said operations or obligations subcontracted or assigned to a different person or entity from claims, damages, losses, and expenses, including but not limited to attorneys' fees, which is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, caused by acts or omissions of Company or anyone directly or indirectly employed by them or anyone for whose acts the Company may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligation of indemnity which would otherwise exist as to a party or person described in this paragraph.

22. The traditional certificate form will remain as evidence of insurance coverage, but this will no longer suffice to document that the City is an additional insured, even if the certificate so states. In order to comply with the with the additional insured requirements, contractors will need to carry one of two types of additional insured endorsements to the policy:
- Option 1 - A specific additional insured endorsement to make the City of Greenville, NC an additional insured for the purpose of the contract, or
 - Option 2 - A blanket additional insured endorsement to cover all companies (including the City of Greenville, NC) that require additional insured protection.

If a contractor chooses Option 1, the specific endorsement, the required documentation for City Contracts is:

- A certificate of insurance to document the coverage, plus
- An **original** of the endorsement to effect the additional coverage.

If a contractor chooses Option 2, the blanket endorsement, the required documentation for City Contracts is:

- A certificate of insurance to document the coverage, plus
- Statements by the agent on the certificate of insurance that:
 - The general liability policy includes a blanket additional insured endorsement showing the endorsement form number, and
 - The City is an additional insured.

23. Indemnification.

- a) To the maximum extent allowed by law, Contractor shall indemnify and save harmless

Indemnities from and against all charges that arise in any manner from, in connection with, or out of this contract (including, but not limited to, charges that arise as a result of acts or omissions of Contractor, Indemnities, or any other person, firm or corporation). In performing its duties under this subsection “a”, Contractor shall at its sole expense defend Indemnities with legal counsel reasonably acceptable to the City of Greenville (“City”).

- b) Definitions. As used in subsections “a” above and “c” below – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, and expenses (including interest and reasonable attorney’s fees assessed as part of any such item); “Contractor” means all parties to this contract other than City; and “Indemnities” means City and its officers, officials, independent contractors, agents, and employees.
 - c) Limitation of Contractor’s Obligation. If this is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road appurtenance or appliance, including moving, demolition and excavating therewith, then subsection “a” above shall not require the Contractor to indemnify or hold harmless the City, its independent contractors, agents, employees, or indemnities against liability for damages arising out of bodily injury to persons or damage to property proximity caused by or resulting from the negligence, in whole or in part, or the City, its independent contractors, agents, employees, or indemnities.
24. The successful bidder is required to commence work within ten (10) written days after written notice from the Project Manager. Termination of work shall also be controlled by the City of Greenville.
25. All work under this contract shall be completed within three-hundred and thirty-five (335) days from the date of the Notice to Proceed.
26. E-VERIFY COMPLIANCE: The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a Subcontractor, the Contractor shall require the Subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. By submitting a proposal, The Proposer represents that their firm and its Subcontractors are in compliance with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.
27. IRAN DIVESTMENT ACT: Vendor certifies that: (i) it is not on the Iran Final Divestment List created by the NC State treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any actions causing it to appear on said list during the term of any contract with the City, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on said list.
28. Any questions regarding the Contract Conditions and Bid Documents should be directed to Mark Nottingham in writing by email to mnottingham@greenvillec.gov 4242.

(USE THIS FORM ONLY)

SUBMIT PROPOSALS IN CARE OF:
Recreation and Parks Department City of Greenville
2000 Cedar Lane
Greenville, NC 27858
(252) 329-4242

BIDDER'S FIRM NAME: _____

DATE: May 6, 2021

PROPOSAL: Greenville Outdoor Aquatic Center

The Undersigned, as Bidder, hereby declares that only person or persons interested in this proposal as principals or principals is or are named herein and that no other persons than herein mentioned has any interest in this proposal or in the contract to be entered, that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respect fair and in good faith without collusion or fraud.

The bidder further declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done; that he has examined the specifications for the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids, that he has satisfied himself relative to the work to be performed.

Materials to be furnished shall be in compliance with standard specifications and special provisions. CONTRACTOR'S responsibility shall continue uninterrupted until expiration of the warranty period as stated in the specifications after completion of the work. The owner (City of Greenville) reserves the right to select any or all of the alternates and to increase or decrease the total contract amount utilizing the unit prices supplied by the CONTRACTOR in the bid form.

The Bidder agrees, if his proposal is accepted, to contract with the City of Greenville, 200 West Fifth Street, Greenville, NC 27858, in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and labor necessary to complete within the time allotted as specified, the General Construction work on the Owner's property, in complete accordance with the Plans, Specifications, and Contract Documents bearing the title **Greenville Outdoor Aquatic Center**, with a definite understanding that no money will be allowed for extra work except as set forth in the Contract Documents for the sums as follows.

City of Greenville, NC
Greenville Outdoor Aquatic Center
BID FORM
Price Breakdown for Individual Base Bid Items Required
BASE BID ITEMS

Item	Description and Price in Words	Price in Figures
1	The construction of all miscellaneous work per the plans and specifications, including but not limited to: General Conditions, Site Preparation, Demolition, Grading, Utilities, Paving, Shade Structures, Site Furnishings, Fencing, Retaining Walls, Electrical Service Modifications, and Landscaping (and any other Base Bid items not covered below), to construct complete and in place the Greenville Outdoor Aquatic Center in Greenville, NC for the Lump Sum of _____dollars and_____cents.	\$ _____
2	The construction of the Buildings, including foundations, mechanical and electrical work, complete and in place for the Lump Sum of _____dollars and_____cents.	\$ _____
3	The construction of the 25Y Competition Pool, & Recreation Pool including all concrete work, mechanical and electrical, bulkhead, finishes, and equipment, complete and in place for the Lump Sum of _____dollars and_____cents.	\$ _____
BASE BID	TOTAL BASE BID (ITEMS 1 THROUGH 3 ABOVE), complete and in place for the total Lump Sum of _____dollars and_____cents.	\$ _____

ADD ALTERNATE (1) BID ITEMS

Item	Description and Price in Words	Price in Figures
AA (A)	Additional Concrete Pool Deck, complete and in place, for the Lump Sum of _____dollars and_____cents.	\$ _____
AA (B)	One Additional Shade 20'x20' Shade Structure with Picnic Tables, complete and in place, for the Lump Sum of _____dollars and_____cents.	\$ _____

AA (C)	Additional site fencing and retaining wall, complete and in place, for the Lump Sum of _____dollars and_____cents.	\$ _____
AA (D)	The construction of the Additional Two Lanes for the 25Y Competition Pool, including all concrete work, mechanical and electrical, finishes, and equipment, complete and in place for the Lump Sum of _____dollars and_____cents.	\$ _____

ADD ALTERNATE (2) BID ITEMS

Item	Description and Price in Words	Price in Figures
AA (A)	The Slide Tower, One Body Flume, complete and in place, for the Lump Sum of _____dollars and_____cents.	\$ _____

A. ALLOWANCES: None Included

B. DECLARATION:

C. ADDENDA: Bidder acknowledges receipt of Addenda as follows:

No. _____ Date: _____

No. _____ Date: _____

No. _____ Date: _____

No. _____ Date: _____

No. _____ Date: _____

D. SUBCONTRACTORS: Prior to the execution of a contract, the successful bidder hereby agrees to provide City of Greenville with a list of all other subcontractors (name, address, telephone number, contact person, etc.):

E. SPECIALTY CONTRACTOR/SUPPLIERS: List the following as a required part of the Bid Form.

Swimming Pool Contractor: _____

Waterslide Supplier: _____

Water Play Equipment Supplier: _____

Fencing Supplier: _____

F. EXTENDED PROPOSAL: Bidder agrees that this bid shall be valid and may not be withdrawn for a period of forty-five (45) calendar days after the closing time for receiving bids.

G. CONTRACT TIME: The Undersigned further agrees to commence said work upon receipt of the Notice to Proceed issued by the City and to complete the same within **Three Hundred and Thirty-Five (335)** Calendar days after date of the Notice to Proceed.

H. LIQUIDATED DAMAGES FOR SUBSTANTIAL COMPLETION: The Undersigned agrees that, from the compensation otherwise to be paid, the Owner may retain the sum of One Thousand and No Dollars (\$1,000.00) for each calendar day that the entire Work remains incomplete after thirty (30) calendar days following the date of the Certificate of Substantial Completion issued by the Architect/Engineer, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the Undersigned to complete the work at the time stipulated in the Contract. This sum is not to be construed in any sense a penalty.

I. FINAL COMPLETION / FINAL ACCEPTANCE: The Undersigned agrees to complete all the Work within thirty (30) calendar days after the date of the Certificate of Substantial Completion issued by the Architect/Engineer.

ALTERNATES

Should any of the alternates as described in the contract documents be accepted, the amount written below shall be the amount to be “added to” the base bid.

REQUIRED FORMS

The following forms have been completed by the CONTRACTOR and are attached hereto. CONTRACTOR to sign.

MBE / WBE Form(s):

Refer to the Instructions section found on page 3 of the MBE / WBE Forms in the Project Manual.

Bid Bond for City of Greenville:

Refer to the Bid Bond forms found in the Project Manual. *Use these forms only.*

Respectfully submitted this _____ day of _____, 2021.

Signature: _____

Title: _____

Firm: _____

Address: _____

License No. _____ Expiration Date: _____

BID BOND for the City of Greenville

Contract name and number or other description of the Contract:

Name of Bidder:

Name, address, and telephone number of Surety's N. C. Resident Agent:

Telephone number of Surety's home office:

Surety is a corporation organized and existing pursuant to the laws of the State of:

Amount of this bond: check (a) or (b):

____(a) *(write or type the amount in words and figures)* All numbers in this section are in U. S. dollars.

(\$ _____)

____(b) five percent of the amount of the proposal

Bond number:

Date of execution of this bond:

Obligee: CITY OF GREENVILLE, a North Carolina municipal corporation.

* * * * *

KNOW ALL PERSONS BY THESE PRESENTS, that the Surety executing this bond, which Surety is duly licensed to act as surety in North Carolina, is held and firmly bound unto the City of Greenville, Obligee, in the penal sum of the amount stated above, for the payment of which sum, well and truly to be made, the Surety binds itself and its successors and assigns, jointly and severally, by these presents. Whereas the Bidder is herewith submitting a proposal for the Contract referred to above, and the Bidder desires to file this Bid Bond in lieu of making the cash deposit pursuant to G.S. 143-129; NOW THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the Bidder shall be awarded the contract for which the bond is submitted, and shall, within ten days after the award is made, execute and deliver to the Obligee the contract and give satisfactory surety as required by G.S. 143-129, then this obligation shall be null and void, otherwise to remain in full force and virtue; and if the Bidder fails or refuses to so execute and deliver said contract or give said satisfactory surety, the Surety shall upon demand forthwith pay to the Obligee the full penal sum of this bond. The Surety waives all extensions of time, and notice of extensions of time, for the opening of proposals and for the modification, award, execution, and delivery of the contract. IN WITNESS WHEREOF, the Surety has executed this instrument under its seal as of the date of execution indicated above, pursuant to authority of its governing body.

(name of Surety)

(signature of Surety's attorney in fact)
(Affix Surety's corporate seal)

(Instructions to Surety: If you use a raised corporate seal, press hard enough to make it legible.)

ACKNOWLEDGMENT OF SURETY'S EXECUTION OF BID BOND

State of _____ County of _____

I, _____, a notary public in and for said county and state, certify that _____ personally appeared before me this day and acknowledged that he or she is Attorney in Fact for

_____, the Surety named in the foregoing Bid Bond, in which bond the Obligee is the City of Greenville, and that he or she executed said bond, under the seal of the Surety, on behalf of the Surety.

This the _____ day of _____, 20_____.

My commission expires: _____

Notary Public

PERFORMANCE BOND AND PAYMENT BOND

Date of Contract: _____

Contract Name and Number: _____

Name of Principal (Name of Contractor): _____

The Principal is organized and existing under the laws of the following State:

Name of Surety: _____

Name, address, and telephone number of Surety's N. C. Resident Agent:

Amount of Performance Bond (in words and figures):

(\$) _____

_____ **dollars**

Bond number: _____

Date of Execution of these Bonds: _____

Contracting Body: **CITY OF GREENVILLE, a North Carolina municipal corporation.**
Amount of Payment Bond: **same dollar amount as the dollar amount of the Performance Bond.**

KNOW ALL PERSONS BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue. As used hereinabove, "modifications" shall include, without limitation, changes (including, without limitation, changes granting extensions of time) and additions to or with respect to the work, scope of work, and specifications. The undertakings, covenants, terms, conditions, and agreements of said contract shall include, without limitation, the Principal's obligations, if any, with respect to damages for delay, to indemnify, and to provide warranties.

KNOW ALL PERSONS BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue. As used hereinabove, "modifications" shall include, without limitation, changes (including, without limitation, changes granting extensions of time) and additions to or with respect to the work, scope of work, and specifications.

The Performance Bond and the Payment Bond are being combined here only for purposes of convenience in signing and acknowledging, and the obligations of the Principal and of the Surety are the same as if the bonds were on separate documents. Each bond is in the dollar amount stated above, and the amounts of these bonds are not combined. The Surety agrees that both of these bonds are fully binding on it whether or not the Principal executes these bonds. These bonds are given pursuant to Article 3 of Chapter 44A of the N. C. General Statutes.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument (for both the Performance Bond and the Payment Bond) under their several seals on the date of execution indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(name of Principal)

[Execution by Principal when the Principal is a corporation]

By: _____
Title of officer: _____

(Affix Principal's corporate seal.)

[Execution by Principal when the Principal is a limited liability company]

By: _____
Manager of Principal

[Surety's execution]

(name of Surety)

(signature of attorney in fact)
(Affix Surety's corporate seal.)

*(Instructions to Surety and Principal: **If you use a raised corporate seal, press hard enough to make it legible.**)*

ACKNOWLEDGMENT OF CONTRACTOR'S EXECUTION OF CONTRACT AND PERFORMANCE BOND
AND PAYMENT BOND

[Acknowledgment when the Contractor (the Principal) is a corporation]

State of _____ County of _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared before me this day and stated that he or she is (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of _____, a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract with the City of Greenville and Performance Bond and Payment Bond with respect to the contract and the corporate seal was affixed to said instrument(s). This the _____ day of _____, 20____.

My commission expires: _____
Notary Public

[Acknowledgment when the Contractor (the Principal) is a limited liability company]

State of _____ County of _____

I, _____, a notary public for said county and state, certify that _____ (1) appeared before me this day, (2) stated that he or she is a manager of _____, a limited liability company, (3) acknowledged that the foregoing contract with the City of Greenville and the Performance Bond and Payment Bond with respect to the contract carry on the company's business in the usual way, and (4) acknowledged the due execution of the contract and the Performance Bond and Payment Bond on behalf of the company.

This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

ACKNOWLEDGMENT OF SURETY'S EXECUTION OF PERFORMANCE BOND AND PAYMENT BOND

State of _____

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally appeared before me this day
and stated that he or she is Attorney in Fact for

_____,
the Surety named in the foregoing Performance Bond and Payment Bond, in both of which bonds the
contracting body is the City of Greenville, and that he or she executed said bonds, under the seal of the
Surety, on behalf of the Surety.

This the _____ day of _____, 20_____

My commission expires: _____

Notary Public

**City of Greenville/Greenville Utilities Commission Minority and
Women Business Enterprise (MWBE) Program**

**City of Greenville
Construction Guidelines and Affidavits
\$100,000 and above**

These instructions shall be included with each bid solicitation.

City of Greenville/Greenville Utilities Commission Minority and Women Business Enterprise Program

\$100,000 and Construction Guidelines for MWBE Participants

Policy Statement

It is the policy of the City of Greenville and Greenville Utilities Commission to provide minorities and women equal opportunity for participating in all aspects of the City’s and Utilities’ contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchases, and professional and personal service contracts.

Goals and Good Faith Efforts

Bidders responding to this solicitation shall comply with the MWBE program by making Good Faith Efforts to achieve the following aspiration goals for participation.

	CITY	
	MBE	WBE
Construction This goal includes Construction Manager at Risk.	10%	6%

Bidders shall submit MWBE information with their bids on the forms provided. This information will be subject to verification by the City prior to contract award. **As of July 1, 2009, contractors, subcontractors, suppliers, service providers, or MWBE members of joint ventures intended to satisfy City MWBE goals shall be certified by the NC Office of Historically Underutilized Businesses (NC HUB) only.** Firms qualifying as “WBE” for City’s goals must be designated as a “women-owned business” by the HUB Office. Firms qualifying as “MBE” for the City’s goals must be certified in one of the other categories (i.e.: Black, Hispanic, Asian American, American Indian, Disabled, or Socially and Economically Disadvantaged). Those firms who are certified as both a “WBE” and “MBE” may only satisfy the “MBE” requirement. **Each goal must be met separately. Exceeding one goal does not satisfy requirements for the other.** A complete database of NC HUB certified firms may be found at <http://www.doa.nc.gov/hub/>. An internal database of firms who have expressed interest to do business with the City and GUC is available at www.greenvillenc.gov. However, the HUB status of these firms must be verified by the HUB database. The City shall accept NCDOT certified firms on federally funded projects only. Please note: A contractor may utilize any firm desired. However, for participation purposes, all MWBE vendors who wish to do business as a minority or female must be certified by NC HUB.

The Bidder shall make good faith efforts to encourage participation of MWBEs prior to submission of bids in order to be considered as a responsive bidder. Bidders are cautioned that even though their submittal indicates they will meet the MWBE goal, they should document their good faith efforts and be prepared to submit this information, if requested.

The MWBE’s listed by the Contractor on the **Identification of Minority/Women Business Participation** which are determined by the City to be certified shall perform the work and supply the materials for which they are listed unless the Contractors receive prior authorization from the City to perform the work with other forces or to obtain materials from other sources. If a contractor is proposing to perform all elements of the work with his own forces, he must be prepared to document evidence satisfactory to the owner of similar government contracts where he has self-performed.

The Contractor shall enter into and supply copies of fully executed subcontracts with each MWBE or supply signed Letter(s) of Intent to the Project Manager after award of contract and prior to Notice to Proceed. Any amendments to subcontracts shall be submitted to the Project Manager prior to execution.

Instructions

The Bidder shall provide with the bid the following documentation:

- Identification of Minority/Women Business Participation (if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit A (if subcontracting)
- OR
- Identification of Minority/Women Business Participation (if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit B (if self-performing; will need to provide documentation of similar projects in scope, scale, and cost)

Within 72 hours or 3 business days after notification of being the apparent low bidder who is subcontracting anything must provide the following information:

- Affidavit C (if aspirational goals are met or are exceeded)
- OR
- Affidavit D (if aspirational goals are not met)
- After award of contract and prior to issuance of notice to proceed: Letter(s) of Intent or Executed Contracts

****With each pay request, the prime contractors will submit the Proof of Payment Certification, listing payments made to MWBE subcontractors.**

*****If a change is needed in MWBE Participation, submit a Request to Change MWBE Participation Form. Good Faith Efforts to substitute with another MWBE contractor must be demonstrated.**

Minimum Compliance Requirements:

All written statements, affidavits, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the City for performance of contracts. Failure to comply with any of these statements, affidavits or intentions or with the minority business guidelines shall constitute a breach of the contract. A finding by the City that any information submitted (either prior to award of the contract or during the performance of the contract) is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City whether to terminate the contract for breach or not. In determining whether a contractor has made Good Faith Efforts, the CITY will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.

Identification of Minority/Women Business Participation

I, _____
(Name of Bidder)

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

Firm Name, Address and Phone #	Work type	*MWBE Category

*MWBE categories: Black, African American (**B**), Hispanic, Latino (**L**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**S**) Disabled (**D**)

If you will not be utilizing MWBE contractors, please certify by entering zero "0"

The total value of MBE business contracting will be (\$) _____

The total value of WBE business contracting will be (\$) _____

City of Greenville **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.

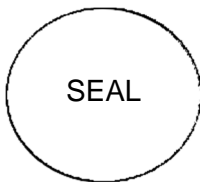
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority/Women Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) 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/women 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 _____

City of Greenville --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

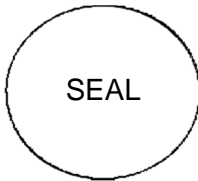
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The 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 _____

City of Greenville - AFFIDAVIT C –

Portion of the Work to be Performed by MWBE Firms

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 MWBE businesses as defined in GS143-128.2(g) and the COG/CITY MWBE Plan sec. III is equal to or greater than 16% 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 and a minimum of _____ % of the total dollar amount of the contract with women business enterprises. Minority/women 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	*MWBE Category	Work description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic or Latino (**L**), Asian American (**A**)
 American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**S**)
 Disabled (**D**)

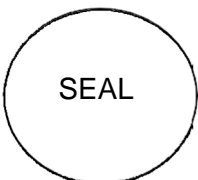
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with MWBE Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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 _____

City of Greenville **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 16% participation by minority/women 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
(Name of Bidder)

that on the _____
(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 and a minimum of _____% of the total dollar amount of the contract with women business enterprises. Minority/women 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	*MWBE Category	Work description	Dollar Value

*Minority categories: Black, African American (B), Hispanic or Latino (L), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (S) Disabled (D)

Examples of documentation 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.

Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with MWBE 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 _____

LETTER OF INTENT

MWBE Subcontractor Performance

**Please submit this form or executed subcontracts with MWBE firms
after award of contract and prior to issuance of notice to proceed.**

PROJECT: _____
(Project Name)

TO: _____
(Name of Prime Bidder/Architect)

The undersigned intends to perform work in connection with the above project as a:

____ Minority Business Enterprise ____ Women Business Enterprise

The MWBE status of the undersigned is certified the NC Office of Historically Underutilized Businesses (required). ____ Yes ____ No

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project at the following dollar amount:

Work/Materials/Service Provided	Dollar Amount of Contract	Projected Start Date	Projected End Date

(Date)

(Address)

(Name & Phone No. of MWBE Firm)

(Name & Title of Authorized Representative of MWBE)

(Signature of Authorized Representative of MWBE)

REQUEST TO CHANGE MWBE PARTICIPATION

(Submit changes only if notified as apparent lowest bidder, continuing through project completion)

Project: _____

Bidder or Prime Contractor: _____

Name & Title of Authorized Representative: _____

Address: _____ **Phone #:** _____

Email Address: _____

Total Contract Amount (including approved change orders or amendments): \$ _____

Name of subcontractor: _____

Good or service provided: _____

Proposed Action:

Replace subcontractor

Perform work with own forces

For the above actions, you must provide one of the following reasons (Please check applicable reason):

The listed MBE/WBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract.

The listed MBE/WBE is bankrupt or insolvent.

The listed MBE/WBE fails or refuses to perform his/her subcontract or furnish the listed materials.

The work performed by the listed subcontractor is unsatisfactory according to industry standards and is not in accordance with the plans and specifications; or the subcontractor is substantially delaying or disrupting the progress of the work.

If replacing subcontractor:

Name of replacement subcontractor: _____

The MWBE status of the contractor is certified by the NC Office of Historically Underutilized Businesses (required). ___Yes___No

Dollar amount of original contract \$ _____

Dollar amount of amended contract \$ _____

Other Proposed Action:

___ Increase total dollar amount of work

___ Add additional subcontractor

___ Decrease total dollar amount of

___ Other

Please describe reason for requested action: _____

If adding* additional subcontractor:

The MWBE status of the contractor is certified by the NC Office of Historically Underutilized Businesses (required). Yes No

**Please attach Letter of Intent or executed contract document*

Dollar amount of original contract \$ _____

Dollar amount of amended contract \$ _____

Interoffice Use Only:

Approval_Y_N

Date _____

Signature _____

Pay Application No. _____ Purchase Order No. _____

Proof of Payment Certification

MWBE Contractors, Suppliers, Service Providers

Project Name: _____

Prime Contractor: _____

Current Contract Amount (including change orders): \$ _____

Requested Payment Amount for this Period: \$ _____

Is this the final payment? _____ Yes _____ No

Firm Name	MWBE Category*	Total Amount Paid from this Pay Request	Total Contract Amount (including changes)	Total Amount Remaining

*Minority categories: Black, African American (B), Hispanic or Latino (L), Asian American (A) American Indian (I), Female (F)
Socially and Economically Disadvantaged (S) Disabled (D)

Date: _____

Certified By: _____

Name

Title

Signature

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Greenville, NC (“Owner”) and Farrior & Sons, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Greenville Outdoor Aquatic Facility – Greenville, NC

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by
Kimley-Horn and Associates, Inc.
421 Fayetteville Street, Ste. 600
Raleigh, North Carolina
NC License # F-0102

Kimley-Horn and Associates, Inc. is hereinafter called ENGINEER and is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

- 3.02 The Owner has retained Kimley-Horn and Associates, Inc. (“Engineer”) to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Days*
- A. The Work will be substantially completed within 303 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 30 days after the date when the Contract is substantially complete.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$1,000.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000.00 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. Total of Stipulated Price Amount **\$ 3,392,000.**

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25TH day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. 95 percent of cost of materials and equipment not incorporated in the Work but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in Paragraph 15.01.B of the General Conditions (with the balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions.
- 6.02 *Final Payment*
- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site, if any, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement
 - 2. Performance bond
 - 3. Payment bond
 - 4. Maintenance bond
 - 5. Certificate of Insurance
 - 6. General Conditions
 - 7. Supplementary Conditions
 - 8. Specifications bearing the title:
Greenville Outdoor Aquatic Facility – Greenville, NC
 - 9. Drawings bearing the following general title:
Greenville Outdoor Aquatic Facility – Greenville, NC
 - 10. Addenda
 - 11. Contractor's Bid Form as contained herein.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and

unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

City of Greenville

Farrior & Sons, Inc.

By: _____

By: _____

Title: P.J. Connelly, Mayor City of Greenville

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

APPROVED AS TO FORM:

BY: _____

Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control act.

BY: _____

Byron Hayes, Director of Financial Services

Account: EPPES-POOL

Exhibit A – Index of Drawings

INDEX OF SHEETS

CIVIL (KIMLEY-HORN)	
C-0.1	COVER
C-0.2	GENERAL NOTES
C-2	TOPOGRAPHIC SURVEY
C-3	EXISTING CONDITIONS & REMOVAL ITEMS
C-4	EROSION CONTROL PLAN - PHASE 1
C-5	EROSION CONTROL PLAN - PHASE 2
C-6	DECK GRADING PLAN
C-7	DECK DRAINAGE PLAN
C-8	SITE PLAN, JOINTING PLAN & DETAIL KEY
C-9	SITE DETAILS - 1
C-10	SITE DETAILS - 2
C-11	SITE DETAILS - 3
C-12	SITE DETAILS - 4
C-13	SITE DETAILS - 5
C-14	PLANTING PLAN
C-15	UTILITY PLAN
C-15	SEWER DETAILS
C-17	WATER DETAILS
C-18	PARKING LOT GRADING AND DRAINAGE PLAN
C-19	STORMWATER DETAILS
C-20	EROSION CONTROL DETAILS
C-21	EROSION CONTROL DETAILS
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G100	LIFE SAFETY PLANS
A101	FLOOR PLAN
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A120	CEILING PLANS
A201	BUILDING ELEVATIONS
A301	BUILDING SECTIONS
A302	BUILDING SECTIONS
A401	ENLARGED PLANS
A431	WALL SECTIONS
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M-3	MECHANICAL DETAILS
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E-1	SITE PLAN - ELECTRICAL
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E-3	BUILDING FLOOR PLANS - POWER
E-4	ELECTRICAL RISER DIAGRAM & PANEL SCHEDULES
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SP1.0	POOL PLAN
SP1.1	POOL SECTIONS
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SP1.3	POOL DETAILS
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SP3.3	ALTERNATE POOL RETURN PIPING PLAN
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S3	POOL FOUNDATION DETAILS
S4	POOL FOUNDATION DETAILS



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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**STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT**

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.

26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,”

“acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

- B. *Evidence of Contractor's Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner's Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

- a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
 - D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and

- procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
- 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 - 2. is of such a nature as to require a change in the Drawings or Specifications; or
 - 3. differs materially from that shown or indicated in the Contract Documents; or
 - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
- 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming

aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related

thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by

Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by

Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

- C. *Commercial General Liability—Form and Content:* Contractor’s commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor’s pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor’s operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds:* The Contractor’s commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor’s professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining

applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding

Supplementary Conditions, the parties required to be insured shall collectively be referred to as “insureds.”

2. be written on a builder’s risk “all risk” policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder’s risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.
 8. allow for the waiver of the insurer’s subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph

6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

- C. *Deductibles*: The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial

occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

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

- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

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

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.

- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.

- b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.

- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the

applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the

Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

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

- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
 8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. *Resubmittal Procedures:*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner

may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal;
 - 6. the issuance of a notice of acceptability by Engineer;
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

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

or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may

also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When

applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
 - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

- 10.01 *Owner's Representative*
- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

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

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will

not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the

requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 - 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash

discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:* Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

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

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required

by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

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

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-off against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for

Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. Reductions in Payment by Owner:

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;

- g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving thereasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons

therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner

and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

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

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 Computation of Times

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

18.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. 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.

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



City of Greenville, North Carolina

Meeting Date: 05/24/2021

Title of Item: Resolution approving a lease agreement with Boys and Girls Clubs of the Coastal Plain for a portion of the property (including school building and office building) at the Lucille W. Gorham Intergenerational Center

Explanation: The Boys and Girls Clubs of the Coastal Plain, a non-profit corporation, requests a 5-year lease (that includes Tenant's option to renew for an additional 5 years) of a portion of the property known as the Lucille W. Gorham Intergenerational Center located at 1101 Ward Street, tax parcel number 73374, and 1100 Ward Street, tax parcel 73375. The leased premises consists of the school building including playground, 10 designated parking spaces in parking lot, and office building (known as the Lessie Bass Building).

The City owns the property referenced above, and the property is presently vacant.

The prospective Tenant proposes to operate a Boys and Girls Club on a portion of the property which includes the school building and playground, parking lot, and office building. The Tenant plans to provide not-for-profit programming involving educational and recreational activities to youth, and Tenant may enter license agreements with third parties to bring other not-for-profit programming to the leased premises. If approved, the lease would commence on May 25, 2021.

The annual rental payments are as follows: Year 1 - \$12,000; Year 2 - \$18,000; Year 3 - \$19,600; Year 4 - \$24,000; Year 5 - (8 months, 24 days), \$18,000; and \$30,000 annually (Years 6-10), if Tenant exercises option to renew for 5 additional years.

The Tenant is responsible for all utilities in the school building. Tenant and City shall have shared use of the first floor of the office building, and Tenant shall have exclusive use of the second floor. Tenant shall pay the utilities for the office building, and City shall reimburse Tenant 50% of the cost of the office building utility bill. Tenant shall make permanent improvements to the leased premises with a value of at least \$25,000 based on plans which shall be submitted to and approved by the City.

Tenant shall be responsible for keeping the leased premises in a clean and sanitary condition and providing for housekeeping, cleaning, and janitorial services. The City shall provide maintenance to keep leased premises in good

repair and provide yard maintenance including mowing.




Fiscal Note:

\$12,000 is to be received in annual rental payment for first year. Year 2 - \$18,000; Year 3 - \$19,600; Year - 4; \$24,000; Year 5 - (8 months, 24 days), \$18,000.

Recommendation:

Approve the attached resolution approving the lease agreement with Boys and Girls Club for a portion of the Lucille W. Gorham Intergenerational Center property (1101 Ward St. and 1100 Ward St.) In addition, authorize the City Manager to negotiate any additional terms necessary for the lease that are in the best interest of the City not inconsistent with the terms herein, and either Mayor or City Manager may execute any instruments associated with the lease.

ATTACHMENTS

-  [Resolution Lease of IGC to Boys and Girls Club of the Coastal Plain.pdf](#)
-  [COG-#1144243-v5-Lease_agreement_Boys_and_Girls_Club.pdf](#)
-  [Map Exhibit A - Lease IGC - Boys and Girls Club 5-24-21.pdf](#)

RESOLUTION APPROVING THE LEASE AGREEMENT WITH BOYS AND GIRLS CLUBS OF THE COASTAL PLAIN FOR A PORTION OF THE LUCILLE W. GORHAM INTERGENERATIONAL CENTER PROPERTY FOR A TERM OF FIVE YEARS WITH OPTION TO RENEW AN ADDITIONAL FIVE YEARS

WHEREAS, North Carolina General Statute § 160A-272 authorizes the City Council of the City of Greenville (“City Council”) to approve a lease of property for a term of ten (10) years or less for any property owned by the City for such terms and upon such conditions as City Council may determine;

WHEREAS, City Council does hereby determine that the property herein described will not be needed by the City for the term of the lease; and

WHEREAS, the required notice has been published and the City Council is convened in a regular meeting.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the Lease Agreement with Boys and Girls Clubs of the Coastal Plain (Tenant) for the following city-owned property:

A portion of the property known as the Intergenerational Center, specifically, the school building and immediate grounds, playground, and 10 designated parking spaces in parking lot located at 1101 Ward Street, tax parcel number 73374, and the office building (known as the Lessie Bass Building) and grounds surrounding that building located at 1100 Ward Street, tax parcel 73375 (located in Greenville, NC)

for a term of 5 years, commencing on May 25, 2021 and terminating on May 24, 2026, unless Tenant exercises option to renew for an additional 5 years. Annual rental payments are as follows:

- Year 1-\$12,000;
- Year 2-\$18,000;
- Year 3-\$19,600;
- Year 4- \$24,000;
- Year 5-(8 months, 24 days), \$18,000; and
- \$30,000 annually (Years 6-10), if Tenant exercises option to renew for 5 additional years.

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the City Manager or Mayor is hereby authorized to execute said Lease Agreement, and the City Manager is authorized to negotiate any additional terms necessary for the lease that are in the best interest of the City not inconsistent with the terms herein.

This the 24th day of May, 2021.

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

NORTH CAROLINA

LEASE AGREEMENT

PITT COUNTY

DRAFT

THIS LEASE AGREEMENT ("Lease"), made and entered into this the ___ day of _____, 2021, by and between the CITY OF GREENVILLE, a municipal corporation (the "City"), and Boys and Girls Clubs of the Coastal Plain, a North Carolina nonprofit corporation ("Tenant").

WITNESSETH:

WHEREAS, the City is a municipal corporation established and operating pursuant to the laws of the State of North Carolina;

WHEREAS, the City is the owner of real property ("property") situated within the City of Greenville, Pitt County, North Carolina, known as the Lucille W. Gorham Intergenerational Center, located at 1101 Ward Street (tax parcel number 73374) and 1100 Ward Street (tax parcel number 73375) and being fully described in that certain deed recorded in Deed Book 2196, Pages 463-465, and further identified on the map entitled Intergenerational Center Property recorded in Map Book 66, Page 116, all in the Pitt County Registry to which reference is made for a more accurate description;

WHEREAS, Tenant is a North Carolina nonprofit corporation that performs the mission of enabling all young people, especially those who are at-risk, to reach their full potential as productive, caring and responsible citizens;

WHEREAS, the City and Tenant desire to enter a lease for the leased premises as shown on certain areas of the attached map and more specifically described below for a 5 year period with option to renew an additional 5 years pursuant to G.S. § 160A-272;

WHEREAS, Tenant during the term of the lease shall operate a Boys and Girls Club on a portion of the property defined below as "leased premises", and such Club shall provide not-for profit programming involving educational and recreational activities to youth, and Tenant may enter license agreements with third parties to bring other not for profit programming to the leased premises as provided herein;

WHEREAS, the Leased Premises is in West Greenville, an area of City where City desires more educational and recreational opportunities be afforded to youth who reside there;

WHEREAS, on _____, the Greenville City Council acting pursuant to G.S. §160A-272, adopted Resolution No. _____ providing for the lease of the Leased Premises to Tenant upon specified terms and conditions.

NOW, THEREFORE, in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Special Terms and Conditions

1. Leased Premises. The City leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions contained herein, the Leased Premises described as follows:

Being a portion of the property known as the Lucille W. Gorham Intergenerational Center, located at 1100 Ward Street (tax parcel 73375), and 1101 Ward Street (tax parcel number 73374), and with said leased portions being shown and labeled on the **attached map - Exhibit A**, as Buildings 1 and 2 and Areas A and B, with said use subject to the specifications and limitations set forth below:

- Lessie Bass Building at 1100 Ward Street, hereafter referred to as the Office Building, labeled Building 1. Tenant shall have exclusive use of 2nd floor and shall share use of 1st floor and grounds surrounding Building 1 with the City.
- School Building at 1101 Ward Street, labeled Building 2. Tenant shall have exclusive use of the Building and shall share use of the immediate grounds surrounding Building 2 with the City; Tenant shall have exclusive use and ingress and egress rights to 10 parking spaces designated on the map in the parking lot consisting of the 9 spaces closest to Ward Street and the 1 other space labeled Area B, limited to the hours that the Tenant is operating a Boys and Girls Club; Tenant shall have exclusive use of the playground labeled Area A, limited to the hours the Tenant is operating a Boys and Girls Club.

Shared Use Area: 1st floor of office building:

Tenant and City shall share use of the 1st floor of the office building and grounds surrounding that building --labeled Building 1, and shall share use of the grounds immediately surrounding school building labeled Building 2. However, Tenant shall only submit a request to City with

reasonable advance notice to use the 1st floor of the office building, and this requirement does not apply to the grounds described above. The City in its sole discretion may approve or disapprove said request or condition its approval on factors deemed by City to be in the best interest of preserving the leased premises. However, no authorization of use shall be unreasonably withheld by City, or unreasonably conditioned.

Notice: Tenant shall give notice of the request to use the 1st floor of the office building (shared use area) to the City Manager or City Manager's designee.

2. Term. Subject to the terms and conditions of this Lease, the term of this Lease shall commence on May 25, 2021, and shall expire at 11:59 p.m. on the date that is five (5) years thereafter (May 24, 2026) with the option to renew for an additional five years if Tenant notifies City not less than 90 days prior to expiration of this lease.

3. Rent.

a. The annual rental shall be payable in equal monthly installments and shall not begin until September 1, 2021.

- Year 1 annual rental payment period: September 1, 2021 through August 31, 2022. The annual rent shall be \$12,000 payable in equal monthly installments of \$1,000.
- Year 2 annual rental period: September 1, 2022 through August 31, 2023. The annual rent shall be \$18,000 payable in equal monthly installments of \$1,500.
- Year 3 annual rental period: September 1, 2023 through August 31, 2024. The annual rent shall be \$19,600 payable in first 9 equal monthly installments of \$1,500, then last 3 months equal monthly installments of \$2,000.
- Year 4 annual rental period: September 1, 2024 through August 31, 2025. The annual rent shall be \$24,000 payable in equal monthly installments of \$2,000.
- Year 5 (8 months, 24 days rental period): September 1, 2025 through May 24, 2026. The total rental period (8 months, 24 days) shall be \$18,000 payable in equal monthly installments of \$2,000.

If Tenant exercises option to renew lease for an additional 5 years, the annual rent each year shall be \$30,000, payable in monthly installments of \$2,500.

b. Rental shall be payable in advance on or before the first business day of each calendar month. Payment shall be made to the City of Greenville and may be mailed to: Finance Director, City of Greenville, P.O. Box 7207, Greenville, NC 27835-7207, or delivered in

person to the Finance Director in City Hall at 200 West Fifth Street in Greenville, NC.

- c. Rental shall be considered past due if not received by the tenth calendar day of the month for which rental is due.

4. Improvements. No improvements shall be made to the leased premises without the prior written consent of the City. The City shall be responsible for installing a heating, ventilation and air conditioning (HVAC) system that services Building 2 (see attached map- Exhibit A). Tenant shall make permanent improvements with a value of at least \$25,000 based on plans which shall be submitted to the City on or before September 30, 2021, approved by the City and such plans shall have a projected date of completion. Such improvements will include kitchen and bathroom renovations, painting, moving walls and reconfiguring second-floor office space in the office building (see map, Building 1). Or if renovations change then Tenant shall notify City Manager of the proposed change of the improvements. The improvements installed by Tenant shall become fixtures, and become part of the property.

5. Use and Occupancy.

- a. Tenant shall not use the Leased Premises for any purpose other than as activities that support not-for profit programming involving educational and recreational activities for youth, specifically the operation of the Boys and Girls Clubs of the Coastal Plain, and Tenant may enter into license agreements with third parties to bring other not for profit programming to the leased premises as provided in Paragraph numbered 25 below. Aside from fund raising and other incidental business conducted as part of permitted programming, commercial activity is not permitted. Smoking is not permitted on the property.
- b. Tenant shall make no other use of the leased premises without the prior written consent of the City.
- c. The Leased Premises shall at all times be kept open and accessible to Tenant, its agents and employees.
- d. Tenant shall comply with all federal, state or local laws, ordinances, regulations and rules applicable to Tenant's use of the Leased Premises.
- e. Tenant shall be responsible, at its expense, for providing the staffing, furniture, equipment, supplies and other items necessary for the programs and activities which the Tenant conducts. Tenant, at the request of the City Manager or Manager designee,

shall have one of its agents or employees provide desk coverage/ receptionist duties on the first floor of the office building (“Lessie Bass Building”, Building 1 on map) when the City has a City event or function during Tenant’s office hours on days when Tenant is open for business. The Tenant’s agent or employee’s duties may include among other things, screening persons entering the office building and enforcing City and Tenant rules regarding use of the first floor.

Other Terms and Conditions Use of Leased Premises.

6. Utilities. Tenant shall be responsible for paying all utility expenses including electricity, gas, lighting, heating, water, air conditioning, sewer, telephone, and all other charges for utilities used by Tenant in connection with the school building (Building 2). In addition, Tenant shall enter an agreement with City for payment of a fee for using the City dumpster and recycling containers on property for disposing of Tenant’s trash (except grease), recyclables and other solid waste. Or in the alternative, Tenant may contract with another party to dispose its trash, recyclables and other solid waste.

Office building: Shared Cost.

Tenant responsible for all utility expenses in office building. But upon receipt of bill, Tenant will forward to City and City shall reimburse Tenant 50% of the cost.

7. Tenant’s Inspection, Maintenance and Trash Disposal. Tenant represents that it has inspected the Leased Premises and found it to be in acceptable condition for the purposes herein specified, and accepts the Leased Premises in its current condition. Tenant shall, at its sole cost and expense, be responsible for keeping the leased premises in a good, clean, neat, attractive, pleasant and sanitary condition at all times (for instance, changing burnt out light bulbs, keeping restrooms stocked with supplies, and unclogging toilets). Tenant shall be responsible for providing and paying for all charges for housekeeping, cleaning, and janitorial services at the leased premises including waxing and mopping floors, and shall dispose of trash (with the exception of grease and other unlawful items), and items that can be recycled by placing trash in the City dumpster, and placing items that can be recycled in containers on the property. However, the City shall be responsible for janitorial service to the first floor of Office Building ONLY after a City event is held on the First Floor. Tenant

shall comply with local, state and federal law when placing trash and recyclables in City dumpster and recycling containers.

8. City Maintenance and Repairs. City shall, at its sole cost and expense, be responsible for keeping the leased premises in good repair and tenable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to, furnishing and replacing electrical light fixture ballasts, heating and air conditioning filter pads, and broken glass.
9. Mowing, Yard maintenance. The City is responsible for yard maintenance including mowing of the leased premises and entire Property.
10. City's Use of Property (Not part of "Leased Premises"). The City will give prior NOTICE to Tenant, if City plans to allow any third parties to use any portion of property that is not part of the leased premises for instance buildings, grounds and parking spaces not part of the leased premises. See map (Exhibit A). The requirement of Notice herein does not include City responsibilities in this lease such as entering property for purposes of mowing grounds or maintenance or ingress or egress to parking lot for the above purposes, and access as described in the lease. Tenant will inform City if the City's authorization of any third parties' use of the property is inconsistent with Tenant's mission.
11. Bus Drop-off and Pick-up. The City shall designate the area in front of the main entrance to the school building on Ward Street to be a "no parking" area for the purpose of allowing buses carrying persons traveling to Tenant's leased premises to be dropped off or picked up. The City Manager's designee shall determine what type of marking, and extent of marking if any is allowed to designate the "no parking" area described above.
12. Damage or Destruction by Fire or Other Casualty. In the event that the building or buildings located on the leased premises are destroyed by fire or other casualty or act of God, then this Lease Agreement shall terminate as of the time of such destruction without action on the part of either the City or the Tenant. In the event that any building located on the leased premises

is so damaged by fire, other casualty, or act of God that more than twenty five (25%) of the floor space of the building cannot reasonably be used by Tenant in the conduct of its activities, or the building is so damaged by fire or other casualty or act of God that it cannot, in the City's opinion, be economically repaired, then either party shall have the option to terminate this Lease Agreement by the provision of written notice to the other party, but if neither party terminates this Lease Agreement, then rent shall be reduced by the percentage of unusable floor space for as long as it is unusable. The shared event space shall not be used in calculating unusable floor space.

13. Tenant's Signs. Tenant shall not install any signage on the Leased Premises without the City's prior written consent; any such signage shall comply with applicable ordinances, rules and regulations of the City. City has the sole right to place signage on the property naming the property or buildings on the property. The Tenant shall not remove any existing signage on the property without permission of the City including the following signs on the property: Lucille W. Gorham Intergenerational Center sign near Building 3, and the signage on the office building naming the building the Intergenerational Community Center.
14. Warranty. The City covenants to and with Tenant that upon timely payment of rent and any other charges due and payable and observing and performing all of the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant shall have the right to quiet possession of the Leased Premises, free from any adverse claims whatsoever from any persons whomsoever upon the terms and conditions of this Lease.
15. Eminent Domain.
 - a. If the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and the City and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.
 - b. If more than twenty-five percent (25%) of the Leased Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Leased Premises is rendered unusable for the permitted use, either the City or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Leased

Premises taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from the City of written notice that said Leased Premises have been or will be so taken. In the event of such termination, both the City and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

- c. If this Lease is not terminated on account of a taking as provided herein above, then Tenant shall continue to occupy that portion of the Leased Premises not taken and the annual rent provided for herein and other sums due under the Lease shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any partial taking of the Leased Premises.
- d. The City shall be entitled to the entire condemnation award for any taking of the Leased Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this paragraph, provided Tenant's award does not reduce or affect the City's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

16. Insurance.

Commercial General Liability:

Limits:

Each Occurrence:	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The aggregate limit must apply per project. The form of coverage must be the ISO CG 00 01 policy as approved by the State of North Carolina Department of Insurance. If a form of coverage other than the CG 00 01 is used it must be approved by the City. Any endorsed exclusions or limitations from the standard policy must be clearly stated in writing and attached to the Certificate of Insurance. Completed Operations coverage must be maintained for the period of the applicable statute of limitations.

The City must be added as an Additional Insured to the Commercial General Liability policy.

All insurance companies must be admitted to do business in North Carolina and be acceptable to the City. If the insurance company(s) is a permitted surplus lines insurer, the insurance company name, and NAIC number must be submitted to the City's Risk Manager for approval before commencing work. Company shall be required to provide the City no less than thirty (30) days' notice of cancellation, or any material change, to any insurance coverage required by this Agreement.

A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified.

The City's review or acceptance of Certificates of Insurance shall not relieve the Company of any requirement to provide the specific insurance coverages set forth in the Agreement. Nor shall the City's review or acceptance of Certificates of Insurance constitute a waiver of the specific insurance coverage requirements set forth in the Agreement or acknowledgement that all insurance coverage requirements set forth in the Agreement have been met.

17. Liens/Use as Security. Tenant agrees that it will not permit the claim of any contractor, sub-contractor, mechanic, laborer or materialmen to become and remain a lien on the Leased Premises or upon the right, title or interest of the Tenant created by this Lease after the indebtedness secured by such lien shall become due unless the same is in the process of actually being contested in good faith on the part of the Tenant and in any event the Tenant will protect, indemnify and save harmless the City from and in respect of any and all such claims.
18. Access. Tenant will be able to secure and restrict access to the leased premises when not in use for its activities, except Tenant will permit the City and its agents to enter on the Leased Premises at all reasonable times to examine the condition thereof or make repairs, additions or alterations as may be necessary for the safety, preservation or improvement of the Leased Premises.
19. Permits for Occupancy or Renovation. Tenant shall be responsible for obtaining any building permits, zoning compliance, or special use permits for use of the Leased Premises for the intended

activities of the Tenant. The City will cooperate as necessary to assist Tenant, at no cost to the City.

20. Default and Remedies.

- a. Default. Any one or more of the following events shall constitute a default under this Lease:
- i. If Tenant shall continue in default in the payment of any rent or other sum of money becoming due hereunder for a period of thirty (30) days after such sum shall become due and payable; or
 - ii. If Tenant shall default in the performance of any other of the terms, conditions or covenants contained in this Lease to be observed or performed by it and does not remedy such default within thirty (30) days after written notice thereof or does not within thirty (30) days commence such act or acts as shall be necessary to remedy the default and shall not complete such act or acts promptly; or
 - iii. If Tenant shall become bankrupt or insolvent, or file any debtor proceedings, or file in any court pursuant to any statute, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization, or file or have filed against it a petition for the appointment of a receiver or trustee for all or substantially all of the assets of Tenant and such appointment shall not be vacated or set aside within thirty (30) days from such appointment.
- b. Remedies.
- Upon the occurrence of a default, the City, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:
- i. Terminate this Lease, either before or after re-entry, and at the City's option, recover from Tenant damages payable by Tenant hereunder for the remainder of the term and such reasonable rental value of the Leased Premises for the remainder of the term.
 - ii. Charge and collect from Tenant all costs and expenses, including reasonable attorney fees, arising out of Tenant's default and the City's enforcement of its rights hereunder.
 - iii. Exercise any other legal or equitable right or remedy which it may have.

21. Surrender of Premises. At the end of the term, Tenant shall peaceably yield up the Leased

Premises to the City in as good repair and condition as when delivered to Tenant, excepting ordinary wear and tear, damage by fire, elements or casualty.

22. Holding Over. If Tenant remains in possession of the Leased Premises after the expiration of the term of this Lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month only, but otherwise subject to all of the terms and conditions of this Lease. The month-to-month tenancy may be terminated by either party as provided by law.
23. Exercise of Rights and Notice. All notices, demands or other communications of any type given by a party to the other, whether required by this Lease or in any way related to this Lease, shall be made effective by the personal delivery or by the mailing of a written notice of such exercise to the other party unless a specific provision of this Lease Agreement provides otherwise. Notice shall be effective upon any actual delivery or three days after mailing by first class, United States mail, return receipt requested, postage prepaid, addressed to the other party at the address set forth below:

<p><u>City of Greenville:</u></p> <p>City Manager</p> <p>City of Greenville</p> <p>P.O. Box 7207</p> <p>Greenville, NC 27835</p>	<p><u>Boys and Girls Clubs of the Coastal</u></p> <p><u>Plain:</u></p> <p>c/o Kimberly Boyd (or her successor</p> <p>CEO)</p> <p>621 W. Fire Tower Rd.</p> <p>Winterville, NC 28590</p>
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24. Payment of Property Taxes.
- a. The City and Tenant acknowledge that the Leased Premises is owned by the City of Greenville and that no City or County property taxes shall be due and payable thereon.
 - b. Tenant shall pay promptly all personal property taxes lawfully levied against personal property of any kind upon or about the premises.
25. Assignment and Subletting. Tenant shall not assign or transfer this Lease or sublet the leased premises or any part of the leased premises without the prior written consent of the City. Notwithstanding the foregoing, it is understood and agreed that the Tenant may enter a license or use agreement with a third party (“licensee”) to use the leased premises.
26. Tenant’s Right to enter license or Use Agreements. It is understood and agreed that the

Tenant may enter into a Use Agreement with a licensee to use the leased premises for any activity or use Tenant is allowed to do in this lease agreement, and any other not for profit programming that Tenant authorizes such as allowing a community college to conduct programs and activities at the leased premises which relate to the delivery of a variety of adult education programs.

Notwithstanding any provision of said Use Agreement, as between the City and Tenant, the Tenant shall be responsible for any obligation or responsibility of the Tenant as set forth in this Lease Agreement. In no event shall said Use Agreement provide for a charge to licensee for any fee, charge, or rental which exceeds an equitable sharing of an expense to be borne by Tenant pursuant to this Lease Agreement. In no event shall said Use Agreement allow any use of the leased premises or extend any rights or privileges in addition to those allowed or conferred upon Tenant pursuant to this Lease Agreement. Additionally, said Use Agreement shall require licensee to:

- (a) comply with the Tenant's use limitations set forth herein;
- (b) provide information to the City Manager or City Manager's designee of the programs, activities and services being provided by licensee on the leased premises;
- (c) insure and keep in effect, at all times during the term of this Lease Agreement, at its own cost and expense, insurance on the leased premises against claims for personal injury or property damage under a policy of general liability insurance with a combined single limit of not less than \$1,000,000 with the City named as an additional named insured, written by an insurance company or companies authorized to do business in the State of North Carolina and to provide the City with a certificate of insurance evidencing said coverage;
- (d) agree to indemnify and hold harmless, to the extent permitted and limited by the laws of North Carolina, the City and its officers and employees and Tenant and its officers and employees from and against any and all claims and demands whether from injury to person, loss of life, or damage to property, associated with the programs and activities conducted by licensee on or within the demised premises; and
- (e) observe all applicable local, state, and federal laws and regulations as they pertain to licensee's use and occupation of the leased premises.

27. Indemnity. To the extent permitted by law, Tenant shall and does hereby indemnify the City and agrees to save it harmless and, at the City's option, defend it from and against any and all claims,

actions, damages, liabilities and expenses (including attorneys' and other professional fees), judgments, settlement payments, and fines paid, incurred or suffered by the City in connection with loss of life, personal injury and/or damage to property suffered by third parties arising from or out of the occupancy or use by Tenant of the property or any part thereof including the Leased Premises occasioned wholly or in part by any act or omission of Tenant, its officers, managers, members, shareholders, directors, agents, contractors, employees, licensees or invitees. Tenant's obligations pursuant to this section shall survive any termination of this Lease with respect to any act, omission or occurrence which took place prior to such termination.

28. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without reference to any conflict or choice of laws provision which would operate to make the internal laws of any jurisdiction applicable.
29. Force Majeure. Neither party hereto shall be required to perform any term, condition, or covenant of this Lease during such time performance, after the exercise of due diligence to perform is delayed or prevented by acts of God, civil riots, organized labor disputes, pandemic, epidemic, or governmental restrictions.
30. Survival and Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, beneficiaries, legal representatives, successors and assigns.
31. Amendment and Waiver. Neither this Lease nor any provision hereof may be amended, except by written instrument signed by both parties (City and Tenant). Failure by the City to insist on strict compliance with any term or condition shall not be deemed a waiver of said compliance.
32. Unenforceability. If any provision of this Lease is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be severable and the remainder of the Lease shall continue in full force and effect.
33. Entire Agreement. This Lease is only the agreement between the parties hereto with respect to the subject matter hereof and contains all of the terms agreed upon, and there are no other agreements, oral or written, between the parties hereto with respect to the subject matter hereof.
34. Execution in Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
35. Recording. Within ten days following full execution of this Lease, Tenant shall, at Tenant's

expense, record the Lease in the Office of the Register of Deeds of Pitt County. In lieu of recording the Lease, Tenant may record a Memorandum of Lease, the form of which shall be subject to the approval of the City Attorney. An original of this Lease shall be committed to the Greenville City Clerk for safekeeping.

36. E-Verify Requirements. (a) If this Lease is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) Tenant represents and covenants that its contractors and subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this Lease. (b) If this Lease is subject to NCGS 143-133.3, the Tenant and its contractors and subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

-Signatures are on the following pages.-

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

The City:

CITY OF GREENVILLE

By: _____
P.J. Connelly, Mayor

ATTEST:

By: _____
_____, City Clerk

[Seal]

**NORTH CAROLINA
PITT COUNTY**

I _____, a Notary Public in and for the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that she is Clerk of CITY OF GREENVILLE, a North Carolina municipal corporation, and that by authority duly given and as the act of the CITY OF GREENVILLE, the foregoing instrument was signed in its corporate name by its Mayor, sealed with its corporate seal, and attested by herself as Clerk.

Witness my hand and Notarial Seal, this the ___ day of _____, 20__.

My Commission expires: _____

Notary Public

(Official Seal)

Tenant:
Boys and Girls Clubs of the Coastal Plain

By: _____ (Seal)
Kimberly Boyd, President and CEO

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that _____ personally appeared before me this day, acknowledging to me that she signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein:

Witness my hand and Notarial Seal, this the ___ day of _____, 20__.

My Commission expires: _____

Notary Public

Notary's printed or typed name

(Official Seal)

(Continued on following page)

APPROVED AS TO FORM:

BY: _____
Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ Date _____
Byron Hayes, Director of Financial Services

Account Number _____

Project Code (if applicable) _____

EXHIBIT A- Map of the Intergenerational Center Property
Attached and incorporated by reference to the Lease Agreement

SITE DATA

TOTAL AREA A: 2,326 AC.
 TOTAL AREA B: 0,463 AC.
 TOTAL AREA IN COMMON: 0,000 S.F.
 AREA IN PARKS, RECREATION AREAS, CEMETERIES AND THE LIKE: 0

- GENERAL NOTES**
- ALL AREAS CALCULATED BY GEOMETRIC METHOD.
 - LAND AND DEEDS NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET BE SET AT ALL LOT CORNERS UNLESS OTHERWISE NOTED.
 - CONCRETE FOUNDATION AND RADIUM SURVEY WITH DATA OF THE SAME DATE IS FOR THE PURPOSE OF ESTABLISHING THE WIDTH OF EACH EASEMENT. THE EASEMENTS ARE NOT EXCLUSIVE AND ALL ELECTRICAL LINES WITHIN THOSE DESIGNATED WIDTHS.
 - THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA.
 - MANAGEMENT AGENT: BERT FRIMS 3720470000, DATED JANUARY 2, 2004 AND 3720480000, DATED JANUARY 2, 2004.
 - UNLESS OTHERWISE NOTED ALL DIMENSIONS ARE HORIZONTAL GROUND DISTANCES.

Building	Name
1	Leslie Bass Building
2	School Bldg
3	Annex
4	Rectory
5	Chapel

Area Name	
A	Playground
B	Parking Lot

▶ Parking for Tenants

N.C.G.S. SECTION 89A-401-4028
 NORTHINGS: 691,894.6928
 EASTINGS: 2,478,115.7151

GP LOCATED IN
 FENCE POST (BERT) N 25°52'01" E
 0.78' FROM ANGLE FROM FOUND

COMBINED FACTOR: 0.9999946

FINAL PLAT SHEET 1 OF 1

**INTERGENERATIONAL CENTER PROPERTY
 (FORMERLY ST. GABRIEL'S CATHOLIC CHURCH)**

GREENVILLE TOWNSHIP, PITT COUNTY, NORTH CAROLINA

PARCELS: 27022, 27026, 27027, 27028, 27029, 27030, 27031, 27032, 27033, 27034, 27035, 27036, 27037, 28974, 27002, 27003, 27004, 27024

W. TODD JENKINS

LAND SURVEYING

DRAWN: WTD	DATE: 09/28/08
CHECKED: WTD	SCALE: 1" = 60'

18A BAKER ROAD
 PINE HILL, NORTH CAROLINA 28372
 TELEPHONE: 919-286-2897

REFERENCES

L&P BOOK 1-4, PAGE 487
 MAP BOOK 15, PAGE 9
 MAP BOOK 16, PAGE 11
 OF THE PITT COUNTY REGISTER.

GRAPHIC SCALE

REVIEW OFFICER'S CERTIFICATE

I, , Review Officer of the County, after reviewing the plat and the information it affords, hereby certify that the same conform to the provisions of the laws of the State of North Carolina.

DATE:

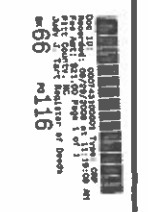
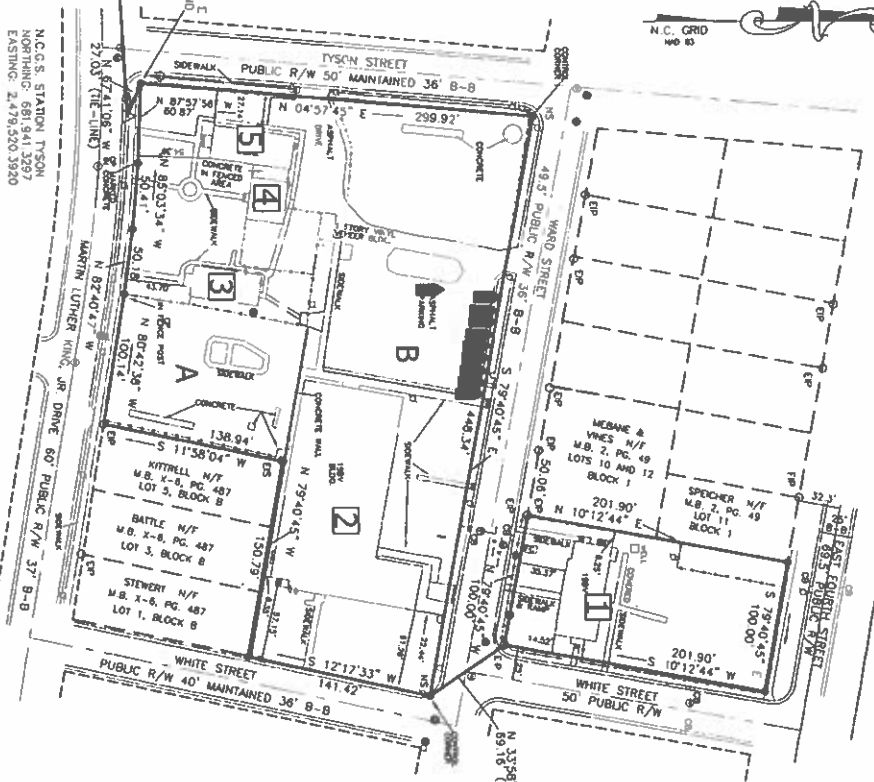
BY: REVIEWER OF DEEDS

CERTIFICATION

I, W. Todd Jenkins, Surveyor, do hereby certify that the same conform to the provisions of the laws of the State of North Carolina.

DATE:

BY: SURVEYOR



LEGEND

- 1" - 1/2" - 1/4" - 1/8" - 1/16" - 1/32" - 1/64" - 1/128" - 1/256" - 1/512" - 1/1024"
- CP - CURB
- EP - EASEMENT
- GP - GRASS
- HP - HIGHWAY
- IP - IMPROVEMENT
- JP - JUNCTION
- KP - KUTTING
- LP - LATERAL
- MP - MOUNTAIN
- NP - NORTH
- OP - OPEN
- QP - QUARTER
- RP - RIGHT
- SP - SOUTH
- TP - TRAIL
- UP - UPPER
- VP - VERTICAL
- WP - WATER
- XP - EXTERIOR
- YP - YARD
- ZP - ZONE