

PROJECT MANUAL
FOR
PETITION STREETS 2021

CITY OF DURHAM PROJECT NO.: ST-286



Engineering Services
Department of Public Works
101 City Hall Plaza
Durham, North Carolina 27701

THIS PAGE INTENSIONALLY LEFT BLANK

CONTRACT: ST-286

PETITION STREETS 2021



Edward R. Venable PE
8-14-2020

**ENGINEERING SERVICES DIVISION
DEPARTMENT OF PUBLIC WORKS
CITY OF DURHAM, NORTH CAROLINA**

CITY OF DURHAM
MAYOR AND CITY COUNCIL

Steve Schewel, Mayor

Jillian Johnson

Charlie Reece

Javiera Caballero

DeDreana Freeman

Mark-Anthony Middleton

CITY OF DURHAM

CONTRACT PROPOSAL

CONTRACT NUMBER: ST-286

COUNTY: DURHAM

**DESCRIPTION: PETITION STREETS 2021 (AMBER PLACE, BRUNSON STREET,
CHALMERS STREET, LANG STREET, LEONARD DRIVE, OMAH
STREET & TURNER STREET)**

DATE OF ADVERTISEMENT: 8/14/2020

PRE-BID MEETING: 8/27/2020 (Virtual Zoom meeting)

BID OPENING: 9/14/20 (Virtual Zoom meeting)

***** NOTICE *****

ALL BIDDERS SHALL COMPLY WITH ALL APPLICABLE LAWS REGULATING THE PRACTICE OF GENERAL CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA. FOR CONTRACTS \$30,000 OR MORE, EXCEPT FOR CERTAIN SPECIALTY WORK AS DETERMINED BY THE LICENSING BOARD, BIDDERS ARE REQUIRED TO BECOME LICENSED BY THE NC LICENSING BOARD. NON-LICENSED BIDDERS ARE PERMITTED 60 DAYS AFTER BID OPENING TO OBTAIN PROPER LICENSING FOR THE TYPE OF PROJECT BEING LET. BIDDERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA.

NAME OF BIDDER

ADDRESS OF BIDDER

RETURN BIDS TO: CITY OF DURHAM

Attention: Erik Adkins, EI

Person's Title: Project Manager

Physical Address: Public Works, 101 City Hall Plaza, Ste. 3100, Durham, NC 27701

ALL BIDS MUST BE RECEIVED PRIOR TO THE DATE AND TIME LISTED ABOVE.

INVITATION TO BID

Contract: ST-286

Project: **PETITION STREETS 2021 (AMBER PLACE, BRUNSON STREET, CHALMERS STREET, LANG STREET, LEONARD DRIVE, OMAH STREET & TURNER STREET)**

Owner: City of Durham
101 City Hall Plaza
Suite 3100
Durham, North Carolina 27701

Issuing Office: Public Works Department

Attention: Erik Adkins, EI
City of Durham
Public Works Department
Engineering Division
101 City Hall Plaza, Ste. 3100
Durham, North Carolina 27701
(919) 560-4326 ext. 30266

Date: 08/14/2020

The City of Durham will open sealed Bids submitted by Bidders at 2:00 PM on 09/14/2020 for Contract ST-286, 'PETITION STREETS 2021', in 3rd floor 101 City Hall Plaza, Durham, North Carolina. The Project involves the furnishing of all materials, labor, equipment, tools, et cetera, unless otherwise specified, for the complete installation of new pavement on Amber Place, Brunson Street, Chalmers Street, Lang Street, Leonard Drive, Omah Street, and Turner Street.

The Project Manual may be viewed and downloaded, free of charge, from the City of Durham, Department of Finance, Purchasing Division web site: <https://durhamnc.gov/bids.aspx>

This information, as well as other details specific to the project, is also available on the City's project website

<https://durhamnc.gov/4256/2021-Petition-Streets-ST-286>

Bidders are encouraged to forward any questions to the Project Manager.

The City Council of the City of Durham reserves the right to reject any or all of the Bids. All bids must include a non-collusion affidavit.

To ensure that all Bidders using the Purchasing Division's web site are kept up to date on any Addenda, changes, or information notices, please send an e-mail to Erik.Adkins@durhamnc.gov indicating your intention to prepare a Bid for the Project. Failure to complete this step may render your Bid as non-responsive.

Each Bidder is advised that the Work may be inspected and supervised by an Engineer or firm under the direction of the City of Durham. The Engineer or firm may also be involved in the identification of specific repair areas and the proposed method of repairs for the Site Work.

The City of Durham requires the Project to be completed in 740 calendar days from date of Notice to Proceed for Construction.

No Bid shall be considered or accepted unless at the time of its filing the same shall be accompanied by a deposit of cash or a certified or cashier's check drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation (FDIC), in an amount equal to five percent (5%) of the amount of the Bid. The check shall be made payable to the City of Durham. Said deposit shall guarantee that the Contract will be entered into by the successful Bidder if the award is made. Such deposit of cash or certified or cashier's check may be held by the City until the successful Bidder has executed and delivered the Contract Documents, including performance and payment bond.

In lieu of the cash deposit or certified or cashier's check mentioned above, the Bidder may file a Bid bond in the same amount executed by a corporate surety authorized to execute such bonds in North Carolina and in the form attached to the Bidding Documents or on file with the Engineer. Bid bond forms enclosed as part of the Bidding.

Documents must be properly executed at the time Bids are submitted before Bid will be considered. Properly executed Power of Attorney of the corporate surety's agent shall accompany such bond and be attached to the page provided therefore in the Bidding Documents.

Bids shall be submitted under a condition of irrevocability, except as required by law, for a period of ninety (90) days after Bid opening.

The City of Durham reserves the right to accept or reject any or all Bids.

TABLE OF CONTENTS

CONTRACT PROPOSAL	5
INVITATION TO BID	6
TABLE OF CONTENTS	8
INSTRUCTIONS TO BIDDERS	9
CITY OF DURHAM CONTRACT FORMS	11
AGREEMENT FORM - EJCDC STIPULATED SUM (SINGLE-PRIME CONTRACT).....	12
BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)	28
GENERAL CONDITIONS - EJCDC STIPULATED SUM (SINGLE-PRIME CONTRACT)	38
C-700 EJCDC STANDARD GENERAL CONDITIONS -CONSTRUCTION CONTRACT	38
CONTRACT PROVISIONS	92
GENERAL PROVISIONS	92
SPECIAL PROVISIONS	97
APPENDICES	114
APPENDIX A UNDERUTILIZED BUSINESS ENTERPRISE (UBE) REQUIREMENTS AND CONSTRUCTION FORMS	117
UBE PROJECT GOAL SHEET	118
UBE CONSTRUCTION FORMS.....	119
FORM E-101	125
FORM E-102	126
FORM E-104	127
FORM E-105	128
FORM E-106	129
FORM E-107	131
APPENDIX B CERTIFIED UBE LIST	133
APPENDIX C UBE SUBCONTRACTING REPORTING FORMS	139
SUBCONTRACTOR MONTHLY RECORD OF PAYMENT REPORT	140
FINAL SUBCONTRACTING REPORT	141
APPENDIX D NON-COLLUSION AFFIDAVIT FORMS FOR BIDDER AND SUBCONTRACTOR	142
APPENDIX E BID BOND FORMS	145
APPENDIX F NOT USED	148
APPENDIX G PERFORMANCE BOND AND PAYMENT BOND FORMS	149
APPENDIX H REIMBURSEMENT SALES AND USE TAX STATEMENT FORMS	154
APPENDIX I SUBMITTAL TRANSMITTAL FORM AND SUBMITTAL REGISTER FORM	157
APPENDIX J PRIMAVERA	160
APPENDIX K NOT USED	164
APPENDIX L BIDDER SAFETY RECORD REVIEW FORM	166
APPENDIX M PROJECT SPECIFIC INFORMATION	171

END OF SECTION

INSTRUCTIONS TO BIDDERS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE PREPARING AND SUBMITTING YOUR BID.

All bids shall be prepared and submitted in accordance with the following requirements. Failure to comply with any requirement shall cause the bid to be considered irregular and shall be grounds for rejection of the bid.

- 1. The bid form furnished by CITY OF DURHAM with the proposal shall be used and shall not be altered in any manner. DO NOT SEPARATE THE BID FORM FROM THE PROPOSAL!**
2. All entries on the bid form, including signatures, shall be written in ink.
3. The Bidder shall submit a unit price for every item on the bid form. The unit prices for the various contract items shall be written in figures. *****Unit prices must be limited to TWO decimal places.*****
4. An amount bid shall be entered on the bid form for every item. The amount bid for each item shall be determined by multiplying each unit bid by the quantity for that item, and shall be written in figures in the "Amount Bid" column of the form.
5. The total amount bid shall be written in figures in the proper place on the bid form. The total amount shall be determined by adding the amounts bid for each item.
6. Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Bidder shall initial the change in ink. Do not use "White Out" or similar product to make corrections.
7. The bid shall be properly executed. All bids shall show the following information:
 - a. Name of individual, firm, corporation, partnership, or joint venture submitting bid.
 - b. Name of individual or representative submitting bid and position or title.
 - c. Name, signature, and position or title of witness.
 - d. Contractor's License Number (If available)
8. Bids submitted by corporations shall bear the seal of the corporation.
9. The bid shall not contain any unauthorized additions, deletions, or conditional bids.

10. The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
11. **THE PROPOSAL WITH THE BID FORM STILL ATTACHED SHALL BE PLACED IN A SEALED ENVELOPE AND SHALL HAVE BEEN DELIVERED TO AND RECEIVED 101 CITY HALL PLAZA, DURHAM, NC 27701, BY 2:00 PM ON 09/14/2020. BIDDER SHALL FOLLOW APPENDIX M IN THIS PROJECT MANUAL FOR INSTRUCTIONS ON HOW TO DELIVER THE SEALED BIDS.**
12. The sealed bid must display the following statement on the front of the sealed envelope:
“QUOTATION FOR ‘ST-286 PETITION STREETS 2021’
13. City of Durham will not accept Bids by mail or fax for this project.

CITY OF DURHAM CONTRACT FORMS

The successful bidder to whom the contract is awarded (i.e., “Contractor”) shall execute the following Standard City of Durham Contract Agreement Form with the City of Durham evidencing its agreement to the terms and conditions of this Contract Proposal.

SECTION 00 52 15

AGREEMENT FORM - EJCDC STIPULATED SUM (SINGLE-PRIME CONTRACT)

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2020, by and between the City of Durham (Owner), a North Carolina municipal corporation, and _____ (Contractor), a corporation organized and existing under the laws of North Carolina.

The City of Durham and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1.1 WORK

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

The work contemplated under the provisions of this contract includes, but may not be limited to furnishing all labor, equipment, and materials to connect in the City of Durham, located in Durham County, North Carolina. The project is approximately 5400 feet in total length, taking place on Amber Place, Brunson Street, Chalmers Street, Lang Street, Leonard Drive, Omah Street and Turner Street.

1.2 THE PROJECT

- A. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

- Contract: ST-286: Petition Streets 2021

- B. Listed in Appendix M are the sites that the Contractor shall be instructed to complete construction under this Contract.

1.3 ENGINEER

- A. The Project has been designed by The City of Durham, Department of Public Works, Engineering Division (Erik Adkins), who is to act as the City of Durham'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.

1.4 CONTRACT TIMES

- A. Time of the Essence
1. 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.

- B. Days to Achieve Substantial Completion and Final Payment
1. The Work shall be substantially completed within 740 days after the date when the Contract Times commence to run (Notice to Proceed - Construction) as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 770 days after the date when the Contract Times commence to run (Notice to Proceed - Construction).
- C. Liquidated Damages
1. Contractor and the City of Durham recognize that time is of the essence of this Agreement and that the City of Durham will suffer financial loss if the Work is not completed within the times specified in Paragraph 1.4.B.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City of Durham if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City of Durham and the Contractor agree that as liquidated damages for the delay (but not as a penalty), Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City of Durham, Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for completion and readiness for final payment until the Work is completed and ready for final payment.
 2. Failure of the Contractor to commence construction within ten (10) days of the Notice to Proceed shall begin a daily liquidated damages assessment against the Contractor at a rate of fifty percent (50%) of the daily liquidated damages specified in Paragraph 1.4.C.1.
- D. Weather Related Delays
1. The Contractor may request for an extension of Contract Times for delays related to adverse weather as described in the General Conditions, Paragraph 12.02A.
- E. Day and Time Restriction
1. The Contractor will be allowed to work on this project Monday thru Friday between the hours of 7:00 a.m. to 7:00 p.m. The hours may be further restricted by the following:
 - a. No work will be allowed on City Holiday(s), unless authorized by the Engineer.
 - b. Work will only be allowed when there is sufficient natural lighting to work safely.

- c. No artificial lightning will be allowed on this project, unless authorized by the Engineer. If artificial lightning is allowed by the Engineer, all cost for the artificial lightning shall be at the Contractor's expense.
- d. No work will be allowed on a street at or near a school while it is in session, unless authorized by the Engineer.
- e. No work will be allowed in the area where a special event is taking place unless authorized by the Engineer.
- f. No work will be allowed on a street during times of unusually heavy traffic.

1.5 CONTRACT PRICE

A. The City of Durham shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount determined pursuant to Paragraphs 1.5.A.1 and 1.5.A.2 below:

- 1. *Not Used.*
- 2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Paragraph 1.5.A.2:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

Line #	Description	Unit	Quantity	Unit Price	Total Price
0001	CONSTRUCTION SURVEYING	LS	1		
0002	GENERIC MISCELLANEOUS ITEM (Reset Mailboxes/Sign)	EA	22		
0003	GENERIC MISCELLANEOUS ITEM (Reset Sign)	EA	20		
0004	COMPREHENSIVE GRADING	LS	1		
0005	SHALLOW UNDERCUT	CY	22		
0006	DRAINAGE DITCH EXCAVATION	CY	1765		
0007	REMOVAL OF EXISTING ASPHALT PAVEMENT	SY	494		
0008	REMOVAL OF EXISTING CONCRETE PAVEMENT	SY	1035		
0009	PROOF ROLLING	HR	7		
0010	15" RC PIPE CULVERTS, CLASS III	LF	1621		
0011	18" RC PIPE CULVERTS, CLASS III	LF	1010		
0012	24" RC PIPE CULVERTS, CLASS III	LF	310		
0013	30" RC PIPE CULVERTS, CLASS III	LF	161		
0014	36" RC PIPE CULVERTS, CLASS III	LF	511		
0015	36" RC PIPE CULVERTS, CLASS IV	LF	143		

0016	15" PIPE END SECTION	EA	6		
0017	18" PIPE END SECTION	EA	1		
0018	36" PIPE END SECTION	EA	1		
0019	PIPE REMOVAL	LF	1626		
0020	PIPE CLEAN-OUT	EA	9		
0021	FINE GRADING	LS	1		
0022	AGGREGATE BASE COURSE	TON	8100		
0023	MILLING ASPHALT PAVEMENT, 1.5"DEPTH	SY	523		
0024	MILLING ASPHALT PAVEMENT, 2.0"DEPTH	SY	763		
0025	ASPHALT CONC SURFACE COURSE, TYPE S9.5B	TON	2410		
0026	ASPHALT BINDER FOR PLANT MIX	TON	165		
0027	6" PORT CEM CONC PAVEMENT,MISCELLANEOUS (WITHOUT DOWELS)	SY	575		
0028	ENDWALLS	CY	11		
0029	PIPE PLUGS	CY	1.1		
0030	FLOWABLE FILL	CY	8		
0031	MASONRY DRAINAGE STRUCTURES	EA	27		
0032	FRAME WITH GRATE, STD 840.14	EA	1		
0033	FRAME WITH GRATE, STD 840.17	EA	4		
0034	FRAME WITH GRATE, STD 840.22	EA	2		
0035	FRAME WITH GRATE & HOOD, STD 840.03, TYPE **	EA	15		
0036	FRAME WITH COVER, STD 840.54	EA	11		
0037	CONCRETE TRANSITIONAL SECTION FOR CATCH BASIN	EA	15		
0038	GENERIC DRAINAGE ITEM (24" X 24" HEAVY DUTY FRAME AND GRATE)	EA	1		
0039	2'-0" CONCRETE CURB & GUTTER	LF	780		
0040	1'-6" CONCRETE CURB & GUTTER	LF	490		
0041	2'-0" CONCRETE GUTTER	LF	6918		
0042	CONCRETE VALLEY GUTTER	LF	84		
0043	6" CONCRETE DRIVEWAY	SY	3256		
0044	ADJUSTMENT OF MANHOLES	EA	17		
0045	ADJUSTMENT OF METER BOXES OR VALVE BOXES	EA	54		
0046	CHAIN LINK FENCE RESET	LF	70		
0047	GENERIC FENCING ITEM (REMOVE	LF	220		

	& RESET)				
0048	RIP RAP, CLASS B	TON	21		
0049	GEOTEXTILE FOR DRAINAGE	SY	76		
0050	GENERIC EROSION CONTROL ITEM (Silt Fence Outlets)	EA	52		
0051	GENERIC EROSION CONTROL ITEM (Stone Check Dam)	EA	30		
0052	GENERIC EROSION CONTROL ITEM (Compost Sock)	EA	24		
0053	GENERIC EROSION CONTROL ITEM (Inlet Protection)	EA	9		
0054	Generic Erosion Control Item (Rock Inlet Sediment Trap)	EA	32		
0055	Generic Erosion Control Item (Excavated Drop Inlet Protection)	EA	5		
0056	GENERIC EROSION CONTROL ITEM (SILT BASIN TYPE 'B')	EA	2		
0057	TEMPORARY TRAFFIC CONTROL	LS	1		
0058	THERMOPLASTIC PAVEMENT MARKING LINES (4", 90 MILS)	LF	52		
0059	THERMOPLASTIC PAVEMENT MARKING LINES (4", 120 MILS)	LF	281		
0060	THERMOPLASTIC PAVEMENT MARKING SYMBOL (90 MILS)	EA	2		
0061	3/4" WATER LINE	LF	650		
0062	4" WATER LINE	LF	90		
0063	6" WATER LINE	LF	517		
0064	8" WATER LINE	LF	1784		
0065	6" VALVE	EA	4		
0066	8" VALVE	EA	1		
0067	6" TAPPING VALVE	EA	1		
0068	2" BLOW OFF	EA	3		
0069	3/4" WATER METER	EA	28		
0070	RECONNECT WATER METER	EA	5		
0071	FIRE HYDRANT	EA	7		
0072	RELOCATE FIRE HYDRANT	EA	4		
0073	6" LINE STOP	EA	2		
0074	8" LINE STOP	EA	1		
0075	4" SANITARY GRAVITY SEWER	LF	733		
0076	8" SANITARY GRAVITY SEWER	LF	508		
0077	SANITARY SEWER CLEAN-OUT	EA	33		
0078	RECONNECT SANITARY SEWER CLEAN-OUT	EA	5		

0079	4' DIA UTILITY MANHOLE	EA	6		
0080	ABANDON 4" UTILITY PIPE	LF	335		
0081	ABANDON 6" UTILITY PIPE	LF	54		
0082	REMOVE FIRE HYDRANT	EA	1		
0083	ADJUST GAS VALVE	EA	4		
0084	TEMPORARY SILT FENCE	LF	3888		
0085	MATTING FOR EROSION CONTROL	SY	2510		
0086	COIR FIBER WATTLE	LF	700		
0087	POLYACRYLAMIDE (PAM)	LB	350		
0099	SEEDING & MULCHING	ACR	7		
0100	BORE & JACK (*****)	LF	22		
0101	48" CHAIN LINK FENCE	LF	97		
0102	EXPANSION JOINT SEALS	LS	1		
PROJECT SUBTOTAL					
0103	MOBILIZATION	LS	1		
Total cost for Contract ST-286					

1.6

PAYMENT PROCEDURES

A. Submittal and Processing of Payments

1. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

B. Progress Payments; Retainage

1. The City of Durham shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraphs 1.6.B.1.a through 1.6.B.1.e below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of 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 in the General Requirements:
 - a. 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 amount as Engineer may determine or the City of Durham may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
 - b. The City of Durham will retain five (5) percent of the amount of each estimate until Work covered by the Contract is fifty percent (50%) complete. If after the Project is deemed fifty percent (50%) complete based upon the Contractor's gross Project invoices, excluding the value of materials stored on and off-site, and the Contractor provides the City and the Engineer the following:

- 1) Written verification evidencing fifty percent (50%) completion of the Project; and,
- 2) Written consent of the surety named in the Project performance and payment bonds agreeing that the City shall not retain any further retainage from periodic payments due to the Contractor; the City shall cease holding retainage from future periodic payments if the City finds that the Contractor is performing satisfactorily, and any nonconforming Work identified in writing by the Engineer or City (prior to the point of fifty percent (50%) Project completion) has been corrected by the Contractor and accepted by the Engineer or City, whoever provided such prior notice of nonconforming Work. If, however, the City determines the Contractor's performance is unsatisfactory, the City may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, City may assess retainage after fifty percent (50%) project completion, even if the Contractor has complied with [Paragraphs 1.6.B.1.b.1 and 1.6.B.1.b.2 (above)] and continues to perform satisfactorily as necessary to retain two and one-half percent (2.5%) total retainage through the completion of the Project.

c. Not Used

d. Not Used

e. Within sixty (60) days of receipt by City of (1) an Application for Payment and (2) written consent of the surety, and after City has either (1) received a certificate of Substantial Completion or (2) received beneficial occupancy or use of the Project (if applicable), the City of Durham shall pay an amount sufficient to increase total payment to Contractor to the Contract Price, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions, including up to two hundred fifty percent (250%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

C. Final Payment

1. Prior to issuing final payment, the Contractor will furnish to the City of Durham certification that: All Subcontractors and vendors associated with this Contract have been paid; no liens and/or lawsuits have been placed against the Contractor for this Work; and the total dollar amount has been paid to all Subcontractors, Suppliers, and others associated with this project.
2. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the City of Durham shall pay the remainder of the Contract price as recommended by Engineer as provided in said Paragraph 14.07.

1.7 NOT USED

1.8 CONTRACTOR'S REPRESENTATIONS

- A. In order to induce the City of Durham to enter into this Agreement Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 2. Contractor has visited the Site 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.
 3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied all:
 - a. Reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Paragraph 4.02 of the General Conditions; and
 - b. Reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in Paragraph 4.06 of the General Conditions.
 5. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional and supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
 6. Contractor does not consider that any 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 Documents.
 7. Contractor is aware of the general nature of work to be performed by the City of Durham and others at the Site that relates to the Work as indicated in the Contract Documents.
 8. Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
 9. 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.
 10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. The Contractor affirmatively acknowledges and agrees that (a) the Contract Time provide for in the Contract Documents to complete the Work is reasonable and (b) the compensation provided for the Work in the Contract Documents is reasonable.

1.9 CONTRACT DOCUMENTS

A. Contents

1. The Contract Documents consist of the following:
 - a. This Agreement (pages 1 to 16, inclusive).
 - b. Performance and Payment bonds.
 - c. Other bonds: None.
 - d. General Conditions (EJCDC C-700, pages 1 to 54 inclusive, and within project manual titled, "Contract: ST-286 Petition Streets 2021," sealed on August 14, 2020 by engineer, Edward R. Venable (herein after, "Project Manual").
 - e. Technical Specifications as listed in the table of contents of the Project Manual, Pages 93 to 178.
 - f. Construction Drawings found on the City's website labeled as ST-286 Plan Sheets; sealed on August 13, 2018 by engineer, Timothy Watson <https://durhamnc.gov/4256/2021-Petition-Streets-ST-286>
 - g. Addendum(s): None
 - h. Exhibits to this Agreement (enumerated as follows):
 - 1) Contractor's Bid.
 - 2) Contract Certificates of Liability/Insurance.
 - 3) Non-Collusion Statement by Contractor.
 - 4) Documentation submitted by Contractor prior to Notice of Award.
 - i. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - 1) Notice to Proceed.
 - 2) Work Change Directives.
 - 3) Change Order(s).

B. The documents listed in Paragraph 1.9.A.1 are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Paragraph 1.9.A.1.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

E. Coordination of General Conditions, Supplementary Conditions, Agreement, Drawings, and Technical Specifications

1. All components of the Contract Documents are essential elements of the Contract between the Owner and Contractor, and notwithstanding the requirements of Paragraph 3.03 of the General Conditions, in case of a conflict or contradiction among the General Conditions (including Supplementary Conditions), Agreement, Drawings, and Technical Specifications, the following shall be the order of controlling authority as among these

documents: The Technical Specifications and Drawings shall control over the Agreement and the Agreement shall control over the General Conditions (including Supplementary Conditions). The Technical Specifications and the Drawings are intended to work together and complement each other. Any discrepancy or ambiguity between the Technical Specifications and the Drawings shall be interpreted consistent with the clear intent of the designer. If the intent of the designer is not clear, the Engineer shall determine which is controlling.

1.10 MISCELLANEOUS

A. Terms

1. Terms used in this Agreement will have the meanings stated in the General Conditions.

B. Assignment of Contract

1. 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, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

C. Successors and Assigns

1. The City of Durham and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

D. Severability

1. 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 the City of Durham 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.

E. Notices and Communications

1. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City (Owner):

ATTN: Erik Adkins
City of Durham
Department of Public Works/Engineering
101 City Hall Plaza, Ste. 3100
Durham, NC 27701-3329
Fax No.: (919) 560-4316
Email: Erik.Adkins@durhamnc.gov

To the Contractor:

COMPANY
ATTN:
ADDRESS
ADDRESS
PHONE NO.
EMAIL

2. A change of address, fax number, or person to receive notices or communications may be made by either party by notice given to the other party. Any notices or communications under Contract shall be deemed given at the time of actual delivery, if it is personally delivered or faxed. If the notices or communications are sent by United States mail, it shall be deemed given upon the third calendar day following the day on which the notices or communications were postmarked, or upon actual delivery, whichever first occurs.

F. Other Provisions

1. Finish Work

- a. The Contractor shall be responsible for all finish work. Any work that is defaced, scarred, or vandalized prior to acceptance must be corrected within thirty (30) days time from the date notice is given by the City of Durham.

G. Technical Data and Other Work

1. Subsurface and Physical Conditions

- a. No reports of explorations or tests of subsurface conditions at or contiguous to the Site are known to the City of Durham or Engineer.

2. Hazardous Environmental Condition

- a. No reports or drawings related to Hazardous Environmental Condition are known to the City of Durham or Engineer.

3. Other Work

- a. The City of Durham and Engineer are unaware of any other work on the Site at the time of Notice to Proceed

- H. Insurance Requirements-- Contractor shall maintain the insurance coverage required under Article 5 of the General Conditions and in the amounts identified below. In the case of any conflict between this Paragraph 1.10.H and Article 5 of the General Conditions, the Contractor shall comply with more stringent requirement.

1. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.
 - a. Commercial General Liability - Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising injury Liability.
 - b. Automobile Liability - Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.
 - c. Umbrella or Excess Liability - Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.
 - d. Worker's Compensation & Employers Liability - Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$500,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.
 - e. Additional Insured - Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.
 - f. Certificate of Insurance - Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which

coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Dept. of Public Works/Contract Management
101 City Hall Plaza, Ste. 3100
Durham, NC 27701

- g. All primary insurance carriers must be authorized to do business in North Carolina with a Best rating A-VIII or higher.

I. E-Verify Requirements

1. E-Verify Requirement. (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its 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 contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

J. Iran Divestment Act Certification

1. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Contractor" means the person entering into this contract with the City of Durham; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

- K. Change "SDBE" to "UBE" – Paragraph 6.06.K and subparagraphs of the General Conditions are amended by replacing the phrase "Small Disadvantaged Business Enterprises" with "Underutilized Business Enterprises" and replacing "SDBE" with "UBE".

- L. Indemnification provision replacement –Paragraph 6.20 (Indemnification) of the General Conditions is deleted in its entirety and replaced with the following new paragraph:

6.20 *Indemnification applicable to construction agreements or design professional agreements.*

- A. (Definitions). These definitions apply to this Paragraph 6.20 unless otherwise stated.

Contractor – Each party to this contract except the City of Durham.

Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend -- to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault -- a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor -- any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

B. (Standard Indemnification). (i) To the maximum extent allowed by law, the Contractor shall defend, indemnify and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subparagraph "i," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within "Charges" are (1) interest and reasonable attorney's fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract. (iii) Other Provisions Separate. Nothing in this Paragraph 6.20 shall affect any warranties in

favor of the City that are otherwise provided in or arise out of this contract. This Paragraph 6.20 is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (iv) Survival. This Paragraph 6.20 shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

C. (Restriction regarding Indemnitees' Negligence). This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

D. (Restriction regarding Fault). Nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

E. (Restriction regarding Negligence). Nothing in this contract requires the Contractor to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or alleged caused by the professional negligence, in whole or in part of the Contractor, the City, or their derivative parties, whether the claim is alleged or brought in tort or contract.

F. (Liability When at Fault). It is agreed without limitation that nothing in this contract shall be interpreted to exclude from any indemnity or hold harmless provisions enforceable under subparagraphs 6.20.C and 6.20.D any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses, or court costs to be indemnified.

G. (Insurance contracts and bonds) This Paragraph 6.20 does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and does not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.

NON-COLLUSION STATEMENT BY CONTRACTOR

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I,, affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this Bid, proposals, or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

.....
CONTRACTOR

CONSTRUCTION CONTRACT:
ST-286: PETITION STREETS 2021

ENGINEERING SERVICES DIVISION
DEPARTMENT OF PUBLIC WORKS
CITY OF DURHAM, NORTH CAROLINA

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____

ATTEST:

CONTRACTOR OF N.C.

By: _____

_____ Secretary

Title: _____

(Affix Corporate Seal)

ST-286 between the City of Durham and [CONTRACTOR of N.C.]

State of _____

ACKNOWLEDGMENT BY CORPORATION

County of _____

I, _____, notary public, certify that _____

personally appeared before me this day and stated that he or she is _President of _____, a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the corporate seal was affixed thereto. This the ____ day of _____, 20____.

My commission expires:

Notary Public

SECTION 00 41 43

BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)

To: The City of Durham, North Carolina
c/o The City Manager
101 City Hall Plaza
Durham, North Carolina 27701

Date:

Contract: ST-286

Project: PETITION STREETS 2021

Sites: The Work Site for this Contract is at various locations within the City of Durham.

Name of Bidder:

Address of Bidder:

.....

.....

Phone Number of Bidder:

Contact Person for Bidder:

Phone Number of Contact:

Bidder's North Carolina General Contractor's License Number:

1. OFFER

The undersigned Bidder hereby declares that the names of all persons interested in this Bid as principals appear in the blank spaces hereinafter provided for such purpose, that this Bid is in all respects fair and without collusion, that the Bidder has examined the locations of the proposed Work, the Advertisement, the Instructions to Bidders, the Technical Specifications, UBE requirements of the Department of E&I of the City of Durham, the Contract Documents and bond forms, and the Drawings therein referred to and fully understands the same and agrees and accepts the terms and conditions thereof, that it is understood that the estimated quantities are approximate only and are given for the purpose of comparing Bids upon a uniform basis, and that said estimate shall in no way affect the unit prices for the Work.

The undersigned Bidder hereby agrees to furnish at the Bidder's cost the expense of all the necessary labor, tools, apparatus, machinery, equipment, transportation, and all other things which may be required to fully and properly perform all the terms, covenants, provisions, and agreements of the annexed Contract.

The undersigned hereby agrees to do said Work and furnish said materials as prescribed in the Contract Documents and Technical Specifications, and, according to the Drawings and requirements of the Engineer under said Contract Documents and Technical Specifications, in a first-class manner and to the best of the undersigned's ability at the following unit prices.

Having examined the Site of the Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by the Engineer for the Project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the unit prices listed in this Bid form in lawful money of the United States of America.

We have included the Bid security as required by the Instruction to Bidders.

All applicable federal taxes are included and State of North Carolina taxes are excluded from the unit prices.

2. ACCEPTANCE

This offer shall be open to acceptance and is irrevocable, except as required by law, for ninety (90) days from the Bid opening date.

If this Bid is accepted by the City of Durham within the time period stated above, we will:

Execute the Agreement within ten (10) days of receipt of Notice of Award.

Furnish the required bonds within ten (10) days of receipt of Notice of Award.

Commence Work within ten (10) days after receipt of written Notice to Proceed.

If this Bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required bonds, the Bid security shall be forfeited as damages to the City of Durham by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this Bid and the Bid upon which a Contract is signed.

In the event our Bid is not accepted within the time stated above, the required security deposit will be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

3. CONTRACT TIME

If this Bid is accepted, we shall:

- Complete the Work in 740 calendar days from Notice to Proceed - Construction.
- Prosecute the work in a continuous manner.
 - Submit a written request to the Engineer to demobilize from the site for any length of time.

4. UNIT PRICES

The following are unit prices for specific portions of the Work as listed. The unit price Bid for items in this Contract are for furnishing, installing all items of Work as indicated on the Drawings and Technical Specifications, complete, in place and accepted, per the City of Durham Standards and Specifications, North Carolina Department of Transportation (NCDOT) Standards and Specifications, and the North Carolina Department of Environment and Natural Resources (NCDENR) Erosion and Sediment Control Planning and Design Manual. The following is the list of unit prices:

Unit Price Work

Line #	Description	Unit	Quantity	Unit Price	Total Price
0001	CONSTRUCTION SURVEYING	LS	1		
0002	GENERIC MISCELLANEOUS ITEM (Reset Mailboxes/Sign)	EA	22		
0003	GENERIC MISCELLANEOUS ITEM (Reset Sign)	EA	20		
0004	COMPREHENSIVE GRADING	LS	1		
0005	SHALLOW UNDERCUT	CY	22		
0006	DRAINAGE DITCH EXCAVATION	CY	1765		
0007	REMOVAL OF EXISTING ASPHALT PAVEMENT	SY	494		
0008	REMOVAL OF EXISTING CONCRETE PAVEMENT	SY	1035		
0009	PROOF ROLLING	HR	7		
0010	15" RC PIPE CULVERTS, CLASS III	LF	1621		
0011	18" RC PIPE CULVERTS, CLASS III	LF	1010		
0012	24" RC PIPE CULVERTS, CLASS III	LF	310		
0013	30" RC PIPE CULVERTS, CLASS III	LF	161		
0014	36" RC PIPE CULVERTS, CLASS III	LF	511		
0015	36" RC PIPE CULVERTS, CLASS IV	LF	143		
0016	15" PIPE END SECTION	EA	6		
0017	18" PIPE END SECTION	EA	1		
0018	36" PIPE END SECTION	EA	1		
0019	PIPE REMOVAL	LF	1626		
0020	PIPE CLEAN-OUT	EA	9		
0021	FINE GRADING	LS	1		
0022	AGGREGATE BASE COURSE	TON	8100		
0023	MILLING ASPHALT PAVEMENT, 1.5"DEPTH	SY	523		
0024	MILLING ASPHALT PAVEMENT, 2.0"DEPTH	SY	763		
0025	ASPHALT CONC SURFACE COURSE, TYPE S9.5B	TON	2410		

0026	ASPHALT BINDER FOR PLANT MIX	TON	165		
0027	6" PORT CEM CONC PAVEMENT, MISCELLANEOUS (WITHOUT DOWELS)	SY	575		
0028	ENDWALLS	CY	11		
0029	PIPE PLUGS	CY	1.1		
0030	FLOWABLE FILL	CY	8		
0031	MASONRY DRAINAGE STRUCTURES	EA	27		
0032	FRAME WITH GRATE, STD 840.14	EA	1		
0033	FRAME WITH GRATE, STD 840.17	EA	4		
0034	FRAME WITH GRATE, STD 840.22	EA	2		
0035	FRAME WITH GRATE & HOOD, STD 840.03, TYPE **	EA	15		
0036	FRAME WITH COVER, STD 840.54	EA	11		
0037	CONCRETE TRANSITIONAL SECTION FOR CATCH BASIN	EA	15		
0038	GENERIC DRAINAGE ITEM (24" X 24" HEAVY DUTY FRAME AND GRATE)	EA	1		
0039	2'-0" CONCRETE CURB & GUTTER	LF	780		
0040	1'-6" CONCRETE CURB & GUTTER	LF	490		
0041	2'-0" CONCRETE GUTTER	LF	6918		
0042	CONCRETE VALLEY GUTTER	LF	84		
0043	6" CONCRETE DRIVEWAY	SY	3256		
0044	ADJUSTMENT OF MANHOLES	EA	17		
0045	ADJUSTMENT OF METER BOXES OR VALVE BOXES	EA	54		
0046	CHAIN LINK FENCE RESET	LF	70		
0047	GENERIC FENCING ITEM (REMOVE & RESET)	LF	220		
0048	RIP RAP, CLASS B	TON	21		
0049	GEOTEXTILE FOR DRAINAGE	SY	76		
0050	GENERIC EROSION CONTROL ITEM (Silt Fence Outlets)	EA	52		
0051	GENERIC EROSION CONTROL ITEM (Stone Check Dam)	EA	30		
0052	GENERIC EROSION CONTROL ITEM (Compost Sock)	EA	24		
0053	GENERIC EROSION CONTROL ITEM (Inlet Protection)	EA	9		
0054	Generic Erosion Control Item (Rock Inlet Sediment Trap)	EA	32		
0055	Generic Erosion Control Item (Excavated Drop Inlet Protection)	EA	5		

0056	GENERIC EROSION CONTROL ITEM (SILT BASIN TYPE 'B')	EA	2		
0057	TEMPORARY TRAFFIC CONTROL	LS	1		
0058	THERMOPLASTIC PAVEMENT MARKING LINES (4", 90 MILS)	LF	52		
0059	THERMOPLASTIC PAVEMENT MARKING LINES (4", 120 MILS)	LF	281		
0060	THERMOPLASTIC PAVEMENT MARKING SYMBOL (90 MILS)	EA	2		
0061	3/4" WATER LINE	LF	650		
0062	4" WATER LINE	LF	90		
0063	6" WATER LINE	LF	517		
0064	8" WATER LINE	LF	1784		
0065	6" VALVE	EA	4		
0066	8" VALVE	EA	1		
0067	6" TAPPING VALVE	EA	1		
0068	2" BLOW OFF	EA	3		
0069	3/4" WATER METER	EA	28		
0070	RECONNECT WATER METER	EA	5		
0071	FIRE HYDRANT	EA	7		
0072	RELOCATE FIRE HYDRANT	EA	4		
0073	6" LINE STOP	EA	2		
0074	8" LINE STOP	EA	1		
0075	4" SANITARY GRAVITY SEWER	LF	733		
0076	8" SANITARY GRAVITY SEWER	LF	508		
0077	SANITARY SEWER CLEAN-OUT	EA	33		
0078	RECONNECT SANITARY SEWER CLEAN-OUT	EA	5		
0079	4' DIA UTILITY MANHOLE	EA	6		
0080	ABANDON 4" UTILITY PIPE	LF	335		
0081	ABANDON 6" UTILITY PIPE	LF	54		
0082	REMOVE FIRE HYDRANT	EA	1		
0083	ADJUST GAS VALVE	EA	4		
0084	TEMPORARY SILT FENCE	LF	3888		
0085	MATTING FOR EROSION CONTROL	SY	2510		
0086	COIR FIBER WATTLE	LF	700		
0087	POLYACRYLAMIDE (PAM)	LB	350		
0099	SEEDING & MULCHING	ACR	7		
0100	BORE & JACK (*****)	LF	22		
0101	48" CHAIN LINK FENCE	LF	97		
0102	EXPANSION JOINT SEALS	LS	1		
PROJECT SUBTOTAL					
0103	MOBILIZATION	LS	1		
Total cost for Contract ST-286					

We agree to diligently perform the Work in accordance with all Contract Documents, to complete such Work within the period as outlined in the Contract, and to begin Work within ten (10) days after receipt of the Notice to Proceed from the Engineer.

5. ADDENDA

The following Addenda have been received. The modifications to the Bidding Documents noted below have been considered and all costs are included in the Bid.

Addendum No....., Dated.....	Addendum No....., Dated.....
Addendum No....., Dated.....	Addendum No....., Dated.....
Addendum No....., Dated.....	Addendum No....., Dated.....

6. APPENDICES

The following Documents will be submitted to the Issuing Office within five (5) days after the Bid opening:

1. UBE Form E-105 (see Appendix A for blank form and instructions)
2. Non-Collusion Affidavits of all Subcontractors (see Appendix D for blank affidavits)

The following information is included with Bid submission:

1. Bid Form
2. UBE Forms E-101 and E-104 (see Appendix A for blank form and instructions)
3. Non-Collusion Affidavit of Bidder (see Appendix D for blank affidavits)
4. Bid Security (see Appendix E for blank Bid bond forms)
5. List of Contractor Equipment and Personnel
6. Bidder Safety Record Review (see Appendix L)

7. CONTRACTOR EXPERIENCE

The undersigned Contractor has regularly engaged in contract work of this class for years, and has executed the following work as principal(s):

.....
.....
.....
.....
.....

List of Contractor's personnel experienced to do this Work including and designating the Superintendent to be in charge of this Work showing the length of their varied experience with this particular Work. The list shall not include Subcontractor personnel.

Name	Experience	Name	Experience
.....
.....
.....
.....
.....
.....

List of Contractor's equipment in good condition and suitable for completion of this Contract: Contractor must be able to demonstrate ownership of all equipment necessary to complete all portions of the Contract. The list shall not include Subcontractor equipment.

CONSTRUCTION CONTRACT:
ST-286: PETITION STREETS 2021

ENGINEERING SERVICES DIVISION
DEPARTMENT OF PUBLIC WORKS
CITY OF DURHAM, NORTH CAROLINA

.....
.....
.....
.....
.....
.....

Please attach additional sheets as necessary to complete the items above.

8. BID FORM SIGNATURES

Refer to Document 00 21 15 for specific Bid form signature requirements for corporations, partnerships, limited liability companies, individuals, or sole proprietorships.

CONSTRUCTION CONTRACT:
ST-286: PETITION STREETS 2021

ENGINEERING SERVICES DIVISION
DEPARTMENT OF PUBLIC WORKS
CITY OF DURHAM, NORTH CAROLINA

CORPORATION

The Corporate Seal of

.....
(Bidder - print the full corporate name of firm)

.....
(President/Vice President/Authorized Corporate Officer)

(Seal)

was hereunto affixed in the presence of:

.....
(Secretary/Assistant Secretary)

(Seal)

Corporate Address:

.....

.....

.....

.....
(State of Incorporation)

CONSTRUCTION CONTRACT:
ST-286: PETITION STREETS 2021

ENGINEERING SERVICES DIVISION
DEPARTMENT OF PUBLIC WORKS
CITY OF DURHAM, NORTH CAROLINA

LIMITED LIABILITY COMPANY

.....
(Bidder - print the full name of firm)

.....
(Authorized Firm Member)

(Seal)

was hereunto affixed in the presence of:

.....
(Witness)

(Seal)

Firm Address:

.....

.....

.....

.....
(State of Formation)

CONSTRUCTION CONTRACT:
ST-286: PETITION STREETS 2021

ENGINEERING SERVICES DIVISION
DEPARTMENT OF PUBLIC WORKS
CITY OF DURHAM, NORTH CAROLINA

INDIVIDUAL OR SOLE PROPRIETORSHIP

.....
(Bidder - print the full name of individual or sole proprietorship)

(Seal)

Individual or Sole Proprietorship Address:

.....
.....
.....

CONSTRUCTION CONTRACT:
ST-286: PETITION STREETS 2021

ENGINEERING SERVICES DIVISION
DEPARTMENT OF PUBLIC WORKS
CITY OF DURHAM, NORTH CAROLINA

JOINT VENTURE

If the Bid is a joint venture, add additional forms of execution for each member of the joint venture in the appropriate manner using the forms from above.

END OF SECTION

ST-286 between the City of Durham and [CONTRACTOR of N.C.]

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

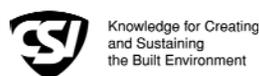
AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by



The Associated General Contractors of America



Construction Specifications Institute

Copyright ©2002

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

Copyright ©2011

City of Durham, Department of Public Works
101 City Hall Plaza, Durham, NC 27701

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY.....	6
1.01 <i>Defined Terms</i>	6
1.02 <i>Terminology</i>	8 9
ARTICLE 2 - PRELIMINARY MATTERS	9 10
2.01 <i>Delivery of Bonds and Evidence of Insurance</i>	9 10
2.02 <i>Copies of Documents</i>	9 10
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	9 10
2.04 <i>Starting the Work</i>	9 10
2.05 <i>Before Starting Construction</i>	9 10
2.06 <i>Preconstruction Conference</i>	9 10
2.07 <i>Initial Acceptance of Schedules</i>	9 10
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10 11
3.01 <i>Intent</i>	10 11
3.02 <i>Reference Standards</i>	10 11
3.03 <i>Reporting and Resolving Discrepancies</i>	10 11
3.04 <i>Amending and Supplementing Contract Documents</i>	11 12
3.05 <i>Reuse of Documents</i>	11 13
3.06 <i>Electronic Data</i>	11 13
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS.....	11 13
4.01 <i>Availability of Lands</i>	11 13
4.02 <i>Subsurface and Physical Conditions</i>	12 14
4.03 <i>Differing Subsurface or Physical Conditions</i>	12 14
4.04 <i>Underground Facilities</i>	13 15
4.05 <i>Reference Points</i>	13 15
4.06 <i>Hazardous Environmental Condition at Site</i>	13 16
ARTICLE 5 - BONDS AND INSURANCE	14 17
5.01 <i>Performance, Payment, and Other Bonds</i>	14 17
5.02 <i>Licensed Sureties and Insurers</i>	15 17
5.03 <i>Certificates of Insurance</i>	15 17
5.04 <i>Contractor's Liability Insurance</i>	15 17
5.05 <i>Owner's Liability Insurance</i>	16
5.06 <i>Property Insurance</i>	16
5.07 <i>Waiver of Rights</i>.....	17
5.08 <i>Receipt and Application of Insurance Proceeds</i>.....	17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	17 21
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>.....	18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES.....	18 21
6.01 <i>Supervision and Superintendence</i>	18 21
6.02 <i>Labor; Working Hours</i>	18 22
6.03 <i>Services, Materials, and Equipment</i>	18 22
6.04 <i>Progress Schedule</i>	18 22
6.05 <i>Substitutes and "Or-Equals"</i>	19 22
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	20 24
6.07 <i>Patent Fees and Royalties</i>	21 25
6.08 <i>Permits</i>	21 26
6.09 <i>Laws and Regulations</i>	21 26
6.10 <i>Taxes</i>	22 26
6.11 <i>Use of Site and Other Areas</i>	22 27
6.12 <i>Record Documents</i>	22 27
6.13 <i>Safety and Protection</i>	22 27
6.14 <i>Safety Representative</i>	23 28
6.15 <i>Hazard Communication Programs</i>	23 28

6.16	<i>Emergencies</i>	<u>23</u> <u>28</u>
6.17	<i>Shop Drawings and Samples</i>	<u>23</u> <u>28</u>
6.18	<i>Continuing the Work</i>	<u>24</u> <u>29</u>
6.19	<i>Contractor's General Warranty and Guarantee</i>	<u>24</u> <u>30</u>
6.20	<i>Indemnification</i>	<u>24</u> <u>30</u>
6.21	<i>Delegation of Professional Design Services</i>	<u>25</u> <u>31</u>
ARTICLE 7 - OTHER WORK AT THE SITE		<u>25</u> <u>31</u>
7.01	<i>Related Work at Site</i>	<u>25</u> <u>31</u>
7.02	<i>Coordination</i>	<u>26</u> <u>32</u>
7.03	<i>Legal Relationships</i>	<u>26</u> <u>32</u>
<u>7.04</u>	<u><i>Other Work</i></u>	<u>32</u>
ARTICLE 8 - OWNER'S RESPONSIBILITIES		<u>26</u> <u>32</u>
8.01	<i>Communications to Contractor</i>	26
8.02	<i>Replacement of Engineer</i>	<u>26</u> <u>32</u>
8.03	<i>Furnish Data</i>	<u>26</u> <u>32</u>
8.04	<i>Pay When Due</i>	<u>26</u> <u>32</u>
8.05	<i>Lands and Easements; Reports and Tests</i>	<u>26</u> <u>32</u>
8.06	<i>Insurance</i>	<u>26</u> <u>32</u>
8.07	<i>Change Orders</i>	<u>26</u> <u>33</u>
8.08	<i>Inspections, Tests, and Approvals</i>	<u>26</u> <u>33</u>
8.09	<i>Limitations on Owner's Responsibilities</i>	<u>27</u> <u>33</u>
8.10	<i>Undisclosed Hazardous Environmental Condition</i>	<u>27</u> <u>33</u>
8.11	<i>Evidence of Financial Arrangements</i>	<u>27</u> <u>33</u>
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION.....		<u>27</u> <u>33</u>
9.01	<i>Owner's Representative</i>	<u>27</u> <u>33</u>
9.02	<i>Visits to Site</i>	<u>27</u> <u>33</u>
9.03	<i>Project Representative</i>	<u>27</u> <u>33</u>
9.04	<i>Authorized Variations in Work</i>	<u>27</u> <u>34</u>
9.05	<i>Rejecting Defective Work</i>	<u>27</u> <u>34</u>
9.06	<i>Shop Drawings, Change Orders and Payments</i>	<u>28</u> <u>34</u>
9.07	<i>Determinations for Unit Price Work</i>	<u>28</u> <u>34</u>
9.08	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	<u>28</u> <u>34</u>
9.09	<i>Limitations on Engineer's Authority and Responsibilities</i>	<u>28</u> <u>35</u>
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		<u>28</u> <u>35</u>
10.01	<i>Authorized Changes in the Work</i>	<u>28</u> <u>35</u>
10.02	<i>Unauthorized Changes in the Work</i>	<u>29</u> <u>35</u>
10.03	<i>Execution of Change Orders</i>	<u>29</u> <u>36</u>
10.04	<i>Notification to Surety</i>	<u>29</u> <u>36</u>
10.05	<i>Claims</i>	<u>29</u> <u>36</u>
<u>10.06</u>	<u><i>Change Orders</i></u>	<u>37</u>
ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK.....		<u>30</u> <u>37</u>
11.01	<i>Cost of the Work</i>	<u>30</u> <u>37</u>
11.02	<i>Allowances</i>	<u>31</u> <u>39</u>
11.03	<i>Unit Price Work</i>	<u>31</u> <u>39</u>
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		<u>32</u> <u>40</u>
12.01	<i>Change of Contract Price</i>	<u>32</u> <u>40</u>
12.02	<i>Change of Contract Times</i>	<u>33</u> <u>41</u>
12.03	<i>Delays</i>	<u>33</u> <u>41</u>
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.....		<u>33</u> <u>42</u>
13.01	<i>Notice of Defects</i>	<u>33</u> <u>42</u>
13.02	<i>Access to Work</i>	<u>33</u> <u>42</u>
13.03	<i>Tests and Inspections</i>	<u>33</u> <u>42</u>
13.04	<i>Uncovering Work</i>	<u>34</u> <u>42</u>
13.05	<i>Owner May Stop the Work</i>	<u>34</u> <u>43</u>
13.06	<i>Correction or Removal of Defective Work</i>	<u>34</u> <u>43</u>
13.07	<i>Correction Period</i>	<u>34</u> <u>43</u>
13.08	<i>Acceptance of Defective Work</i>	<u>35</u> <u>44</u>
13.09	<i>Owner May Correct Defective Work</i>	<u>35</u> <u>44</u>
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		<u>36</u> <u>45</u>
14.01	<i>Schedule of Values</i>	<u>36</u> <u>45</u>
14.02	<i>Progress Payments</i>	<u>36</u> <u>45</u>

14.03	<i>Contractor's Warranty of Title</i>	37 46
14.04	<i>Substantial Completion</i>	37 47
14.05	<i>Partial Utilization</i>	38 47
14.06	<i>Final Inspection</i>	38 47
14.07	<i>Final Payment</i>	38 48
14.08	<i>Final Completion Delayed</i>	39 48
14.09	<i>Waiver of Claims</i>	39 48
<u>14.10</u>	<u><i>Prompt Payment to Subcontractors</i></u>	49
ARTICLE 15	- SUSPENSION OF WORK AND TERMINATION	39 49
15.01	<i>Owner May Suspend Work</i>	39 49
15.02	<i>Owner May Terminate for Cause</i>	39 49
15.03	<i>Owner May Terminate For Convenience</i>	40 50
15.04	<i>Contractor May Stop Work or Terminate</i>	40 50
<u>15.05</u>	<u><i>Protection and Preservation of the Work</i></u>	51
ARTICLE 16	- DISPUTE RESOLUTION	41 51
16.01	<i>Methods and Procedures</i>	41 51
ARTICLE 17	- MISCELLANEOUS	41 51
17.01	<i>Giving Notice</i>	41 51
17.02	<i>Computation of Times</i>	41 52
17.03	<i>Cumulative Remedies</i>	41 52
17.04	<i>Survival of Obligations</i>	41 52
17.05	<i>Controlling Law</i>	41 52
17.06	<i>Headings</i>	41 52
<u>17.07</u>	<u><i>Effect on Other Rights</i></u>	52
<u>17.08</u>	<u><i>Place of Project</i></u>	53
<u>17.09</u>	<u><i>Equal Employment Opportunity (EEO)</i></u>	53
<u>17.10</u>	<u><i>Americans with Disabilities Act (ADA)</i></u>	53

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

9A. *City*--The City of Durham, North Carolina.

9B. *City Council*--The City Council of the City of Durham, North Carolina.

9C. *City Manager*--The City Manager of the City of Durham, North Carolina.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

17A. Document--A specific section of the Project Manual or a reference to a specific section of the Project Manual as noted with the accompanying numeric reference.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

23A. Issuing Office--The office from which the Bidding Documents are to be issued and where the Bidding procedures are to be administered.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Con-

tract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed. The Owner is the City of Durham, North Carolina. The City Manager is hereby designated as Owner's representative. The City Manager is the only individual authorized to act on Owner's behalf under or in connection with the Contract Documents, unless the City Manager designates a new representative in writing. The authority of the City Manager and designated representative(s), if any, includes terminating or suspending Work under Article 15 and executing changes in the Work under Article 10.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31A. *Products*--Means, materials, and equipment that Contractor furnishes and provides, other than labor and services.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

34A. Property Owner--The individual, partnership, co-partnership, limited liability corporation, firm, company, corporation, unincorporated association, organization, joint stock company, trust, estate, institution, governmental entity, or any other entity that owns the property, or controls management or activities of the property where Work or a portion of the Work is performed.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof to make any and all inspections of the Work performed, acting under direct supervision of the Engineer.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer and approved by Owner, 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 lawfully utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

46A. Superintendent--The authorized representative of the Contractor who is assigned to oversee the work forces responsible for performing the Work in accordance with the Contract Documents.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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

following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

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

B. Intent of Certain Terms or Adjectives

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

C. Day

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

D. Defective

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

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

E. Furnish, Install, Perform, Provide

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

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

G. Include

1. The word “include” in its various forms and derivatives shall mean ‘without limitation’ unless the context otherwise requires.

H. Persistently Fails

1. The expression ‘persistently fails’ and other similar expressions, as used in reference to the Contractor, shall mean any act or omission which causes Owner or Engineer to reasonably conclude that Contractor will not complete the Work within the Contract Times or Contract Price, or in substantial compliance with the requirements of the Contract Documents.

I. Pronouns, Numbers, and Titles

1. Unless the context otherwise requires, all personal pronouns used in the Contract Documents shall include all other genders, and the singular shall include the plural and vice versa. Titles and headings of articles, paragraphs, subparagraphs, sections, subsections, parts, subparts, etc., in the Contract Documents are for convenience only, and neither limit nor amplify the provisions.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in ~~the Supplementary Conditions Article 5,~~ certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

A. The City of Durham shall furnish drawings and Project Manual to Contractor in electronic format. The cost of reproduction shall be the responsibility of the Contractor.

2.03 *Commencement of Contract Times; Notice to Proceed*

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

A. The Contract Times will commence to run on the thirtieth (30th) day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the thirtieth (30th) day after the execution of the Contract by the City of Durham, Office of the City Manager.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

B. *Priority List of Sites:* The priority list of Sites for the Project shall be approved by the Engineer or Resident Project Representative. The City of Durham reserves the right to alter the priority list of Sites. The Contractor shall be given notice in writing of any change in the priority list of Sites.

2.06 *Preconstruction Conference*

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

2.07 *Initial Acceptance of Schedules*

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

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or

progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

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 component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

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

D. The General Requirements govern the execution of the Work of all sections of the Technical Specifications of the Contract Documents.

3.02 *Reference Standards*

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees

from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

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

a. The accuracy or exactness of grades, elevations, dimension, or locations given on any Drawings or the Work installed by other contractors, is not guaranteed by Owner.

b. Included under Contractor's duty under the first sentence of Paragraph 3.03.A.1 are:

1) to satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations, and

2) in all cases of interconnection of the Work to be done by Contractor with the rest of the Project, it shall verify at the Site all dimensions needed to make proper interconnections.

c. Contractor shall promptly rectify all errors due to its failure to so verify all such grades, elevations, locations, or dimensions without additional cost to Owner. No extra charge or compensation shall be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings.

d. Contractor acknowledges:

1) the Contract Documents are sufficient to determine the cost of the Work;

2) it has had sufficient opportunity to visit the Site and to examine all conditions, including subsurface and physical conditions, affecting the Work;

3) it has had a sufficient opportunity to examine the Contract Documents for errors, inconsistencies, and omissions;

4) the Contract Documents are complete and unambiguous;

5) the Contract Times are reasonable and sufficient to complete the Work.

e. If the statements in Paragraph 3.03.A.1.d are not accurate, Contractor accepts any risk in connection with making them.

f. Contractor shall evaluate and satisfy itself as to the conditions and limitations under which the Work is to be performed, including (to the extent they are pertinent):

1) the location, condition, layout, and nature of the Site and surrounding areas,

2) generally prevailing climatic condition,

3) anticipated labor supply and costs,

4) availability and cost of materials, tools, and equipment, and

5) other similar issues.

g. To the extent that it may be appropriate for the proper execution of its subcontract, Contractor shall cause each Subcontractor to do the evaluation described in Paragraph 3.03.A.1.f.

h. Owner shall not be required to make any adjustment in with the Contract Times or the Contract Price in connection with any failure by Contractor to comply with Paragraph 3.03.A.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

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

thereof or unless otherwise provided in the Contract Documents, or by Laws or Regulations or common law.

B. Resolving Discrepancies

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

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

2. Owner and Contractor shall do all acts, and shall make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the provisions of the Contract Documents. If inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, specifications, manuals, or Laws or Regulations cannot be resolved by use of provisions of the Contract Documents as described in Paragraph 3.03.B.1, Contractor shall:

a. provide the better quality or greater quantity of Work or

b. comply with the more stringent requirement.

3. Paragraph 3.03.B.2 shall not relieve the Contractor of any obligations otherwise imposed on it.

3.04 *Amending and Supplementing Contract Documents*

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

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

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

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

3.06 *Electronic Data*

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

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

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

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

4.01 *Availability of Lands*

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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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 the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

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.

D. The City of Durham shall obtain a right-of-entry for each Site located on private property. No work shall commence on a private property Site until the Contractor has been given a copy of the executed right-of-entry for that Site and the Contractor has been given permission to begin work on the Site from the Engineer or Resident Project Representative. The City of Durham is solely responsible for obtaining rights-of-entry.

E. The Contractor shall have no more than one (1) uncompleted Site ongoing at any time, unless authorized by the Engineer or Resident Project Representative. Prior to moving to the next Site, the Contractor shall receive permission from the Engineer or Resident Project Representative.

F. The City of Durham shall obtain all encroachment agreements necessary for the completion of the Work. The Contractor shall become familiarized with all the provisions of the encroachment agreements, if any, required for Contract. The Engineer or Resident Project Representative will provide copies of the encroachment agreements. The City of Durham is solely responsible for obtaining encroachment agreements.

G. Public Notice and Advisory: The Contractor shall notify individuals or entities anticipated to be affected by the Work. Notice shall be written and provided to the recipient no less than two (2) days prior to commencing Site construction. Notice shall be delivered in person, door knob hanger, or letter and shall include the following information:

1. nature and schedule of the Work;
2. name and telephone number of a contact person; and
3. any additional necessary information or instructions.

H. The Engineer or Resident Project Representative shall approve any notice prior to commencement of construction.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The ~~Supplementary Conditions identify~~ Agreement, Paragraph 1.10.G.1 identifies:

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

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

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

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in ~~the Supplementary Conditions~~ [Article 4](#):

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings*: Reference is made to the ~~Supplementary Conditions Agreement, Paragraph 1.10.G.2.~~ for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

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

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

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

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

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

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

~~G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.~~

G. Nothing in this Paragraph 4.06 is intended to reduce Owner’s duties under the Contract Documents, including Article 8.

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

~~attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

H. Nothing in this Paragraph 4.06 is intended to reduce Contractor's duties under the Contract Documents, including Article 6.

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

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. Furnish Performance and Payment Bonds on the bond forms included in Appendix G. Performance and Payment Bonds shall be executed by a surety licensed to do business in the State of North Carolina.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within ~~20~~ five (5) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in ~~the Supplementary Conditions~~ Article 5.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in ~~the Supplementary Conditions~~ Article 5, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

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

B. Certificates of insurance shall be addressed to the City of Durham, North Carolina, Attention: Finance Director, 101 City Hall Plaza, Durham, North Carolina 27701.

C. Both the certificates of insurance and additional insured endorsement must be originals and must be approved by the City of Durham's Finance Director before Contractor can begin any Work under this Contract.

D. Failure of the City of Durham to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the City of Durham to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

E. By requiring such insurance and insurance limits herein, the City of Durham does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the City of Durham in the Contract Documents.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain ~~such liability and other commercial general liability~~ such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which

may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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

a. Workers compensation insurance shall cover statutory benefits.

b. Workers compensation insurance shall cover employees; cover Contractor's partners, officers, and relatives (who work on this Contract).

c. Workers compensation insurance shall cover employers' liability in the amount stipulated by the Agreement, Paragraph 1.10.H.1.

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

a. Automobile liability insurance shall cover owned, hired, or borrowed vehicles.

b. Automobile liability insurance shall cover employee vehicles, if used in performance of this Contract.

c. Automobile liability insurance limits shall be as stipulated in the Agreement, Paragraph 1.10.H.2.

7. claims for damages related to premises/operations.

8. claims for damages related to products/completed operations.

9. claims for damages related to broad form property damage.

10. claims for damages related to explosion, collapse, and underground hazards if the hazards exist in the performance of this Contract.

11. claims for damages related to contractual liability.

12. claims for damages related to independent contractors, if any are used in the performance of this Contract.

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

1. with respect to insurance required by Paragraphs 5.04.A.3 through ~~5.04.A.6~~ 5.04.A.12 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in ~~the Supplementary Conditions Article 5~~, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

a. City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the General Liability section of the certificate, in lieu of an original endorsement).

2. include at least the specific coverages and be written for not less than the limits of liability provided in ~~the Supplementary Conditions Article 5~~ or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in ~~the Supplementary Conditions Article 5~~ to whom a certificate

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

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in ~~the Supplementary Conditions~~ Article 5, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

8. have a combined single limit and aggregate limit as stipulated in the Agreement, Paragraph 1.10.H.3.

9. be provided by companies authorized to do business in the State of North Carolina.

10. be provided by companies with Best rating A-VIII. Anything less requires written approval from the Owner.

C. In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the Contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims as may be determined by the Owner.

D. All policies and certificates of insurance of the Contractor shall contain the following clauses:

1. Insurers shall have no right of recovery or subrogation against the Owner and its agents and agencies and the Engineer, it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.

2. The clause "other insurance provisions" in a policy in which the Owner and its agents and agencies and the Engineer is named as an insured, shall not apply to these parties.

3. The insurance companies issuing the policy or policies shall have no recourse against the Owner and its agents and agencies and the Engineer, for the payment of any premiums or for assessments under any form of policy.

4. Any and all deductibles in the above described insurance policies shall be assumed by and be for the amount of, and at the sole risk of the Contractor.

E. Contractor shall purchase and maintain professional liability covering architects and engineers employed or engaged by Contractor covering claim arising out of work in connection with this Contract.

1. Self-insured retentions/deductibles shall be as stipulated in the Agreement, Paragraph 1.10.H.4.

2. Combined single limit of insurance shall be as stipulated in the Agreement, Paragraph 1.10.H.5.

3. This insurance shall be maintained for six (6) years following the date of completion of the Work under this Contract.

F. Contractor shall cause each Subcontractor employed by the Contractor to purchase and maintain insurance of such types specified above. Valid certificates of insurance consistent with requirements of Article 5 shall be obtained by the Contractor and forwarded to the City prior to Contractor's use of Subcontractors in the performance of any aspect of this Contract.

~~5.05 — Owner's Liability Insurance~~

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

~~5.06 — Property Insurance~~

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

~~1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;~~

~~2. be written on a Builder's Risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;~~

~~3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);~~

~~4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;~~

~~5. allow for partial utilization of the Work by Owner;~~

~~6. include testing and startup; and~~

~~7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.~~

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

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

~~D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any~~

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

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

~~5.07—Waiver of Rights~~

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

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

~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~

~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.~~

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

~~5.08 — Receipt and Application of Insurance Proceeds~~

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

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

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

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract

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

~~5.10 — Partial Utilization, Acknowledgment of Property Insurer~~

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

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

received from the superintendent shall be binding on Contractor.

C. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, Owner and Contractor shall communicate through Engineer. Communications by and with Engineer's consultants shall be through Engineer.

6.02 *Labor; Working Hours*

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

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

6.03 *Services, Materials, and Equipment*

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. Engineer may reject any material and equipment delivered to the Site without the approval of satisfactory evidence required by the Contract Documents.

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

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07

as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

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

1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other

work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2. The procedure for payment of expenses shall be similar to that provided in Paragraph 6.05.A.1.b.1.

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

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

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating and implementing a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B

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

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

G. Any materials and equipment required to be approved by the Engineer that is installed on the Project without such approval is subject to removal, disposal, and replacement by the Contractor at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection. However, if the Contract Documents specify any item, process, or the like that is available only from a Subcontractor or Supplier against whom Contractor has an objection, the preceding sentence does not apply as to that particular Subcontractor or Supplier.

B. If ~~the Supplementary Conditions Article 6~~ requires the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with ~~the Supplementary Conditions Article 6~~, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

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

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

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

each Subcontractor or Supplier to enter into similar agreements with persons and firms that Subcontractor or Supplier has contracted with for any part of the Work.

H. *Furnishing Subcontractor Documents:* At any time after the Agreement is executed, whether or not notice of termination has been given, Contractor shall upon request of the Owner promptly give the Owner a copy of the entire text of all agreements, (including attachments and exhibits) with Subcontractors, together with all other documents by which any services, materials, equipment, or other goods were ordered by the Contractor, including documents showing the cost, delivery dates, and all terms and conditions (including those relating to ordering and canceling).

I. *Partial Requirements of Subcontracts:* All subcontracts shall include substantially the following Paragraphs 6.06.I.1 and 6.06.I.2. Upon Owner's request, Contractor shall demonstrate compliance with this Paragraph.

1. Paragraph 6.06.G of the General Conditions of the Construction Contract between Owner (City of Durham) and Contractor is incorporated by reference into this subcontract. To the extent of the Work to be performed by the Subcontractor, the rights of Owner and Engineer under the Owner-Contractor Agreement with respect to the Work to be performed by the Subcontractor are preserved and shall be protected so that subcontracting shall not prejudice those rights. Owner (City of Durham) is an intended third party beneficiary of this subcontract.

2. If Contractor is terminated by Owner, and even if Contractor defaults in such a way which would give the Subcontractor the right to terminate this subcontract, the Subcontractor hereby agrees that, upon written request (by Owner, or a contractor substituted in place of the original Contractor, or any surety obligated under bond relating to the Owner-Contractor Agreement), the Subcontractor will continue to perform its obligations under this subcontract (on the same terms and conditions as apply to this subcontract) for and on account of Owner, such substitute contractor, or the surety. If requested by Owner or surety, the Subcontractor shall execute a separate document to show its commitment to continue performance pursuant to this subcontract. Assignment is subject to the prior rights of the surety. Owner shall be responsible to the subcontractor only for those obligations of Contractor that accrue after Owner exercises any rights under this Paragraph.

J. The Contractor shall comply with all applicable provisions of Sections 18-50 through 18-54 of the City of Durham Code (Ordinance to Promote Equal Business Opportunities in City Contracting), as amended from time to time. Failure of Contractor to comply with these provisions shall be a material breach of Contract which may result in the rescission or termination of Contract and/or appropriate remedies in accordance with the provisions of the ordinance, Contract, and State law.

Section 18-59(f) of the ordinance provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have fourteen (14) days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies. If the deficiencies are not cured, the City shall have the right to take all lawful actions." These provisions apply only to alleged Contractor violations of Sections 18-50 through 18-54 of the City Code.

K. The Contractor shall meet all City of Durham requirements for affirmative action and Small Disadvantaged Business Enterprises (SDBE) participation. These requirements are detailed in Appendix A, SDBE Requirements and Construction Forms.

1. The Contractor shall submit form E-105 "Statement of Intent to Perform as Subcontractor" within five (5) days of the Bid opening for each Subcontractor intended to be counted towards the SDBE goals of the Contract.

2. All questions regarding SDBE documents or requirements may be directed to the City of Durham, Department of Equal Opportunity/Equity Assurance at (919) 560-4180.

L. A Privilege License for all Subcontractors shall be filed within five (5) days after the Bid opening. The Contractor and all Subcontractors shall obtain a City of Durham Privilege License from the Department of Finance, Treasury Management Division, located at 101 City Hall Plaza, Durham, North Carolina, (919) 560-4700.

M. The City of Durham or Engineer 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 a particular Subcontractor or Supplier.

6.07 Patent Fees and Royalties

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights, trade secrets, proprietary information, or copyrights held by others, whether or not a particular invention, design, process, Product, or device is specified in the Contract Documents for use in the performance of the Work, and whether or not Engineer, or Owner, or the consultants, contractors, agents, and employees of either of them are aware of such patent rights, trade secrets, proprietary information, and copyrights. ~~If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual~~

~~knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.~~

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

6.08 Permits

A. Unless otherwise provided in ~~the Supplementary Conditions~~ Article 6, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 Laws and Regulations

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

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

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on

the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

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

B. The Contractor will be reimbursed for all North Carolina Sales and Use Tax paid during any preceding month, at the time the monthly estimate is paid, provided they submit a sworn notarized statement itemizing the tax, showing each amount and to whom paid, and certifying that the articles purchased were used in Work performed for the City of Durham. State tax and County tax must be separated. Group amounts by County and provide a subtotal for each County. Amounts for items purchased outside of Durham County and delivered on-Site shall be grouped by County. One copy of all receipts/invoices must be provided for these amounts.

C. Reimbursable sales taxes as described below are to be excluded from unit prices.

1. Sales taxes are reimbursable if they were originally paid on purchases of building materials, fixtures, and equipment that become part of or annexed to any building or structure that is owned or leased by the City of Durham and is being erected, altered, or repaired for use by the City of Durham. Infrastructure (streets, sidewalks, sewer pipes, and water lines, etc.) is generally held to be "structure" so as to allow reimbursement for sales taxes paid on materials and fixtures that become a part of or are annexed to it. Examples of sales taxes that cannot be reimbursed include those paid for purchases such as scaffolding, tools, equipment repair parts, equipment rentals, forms for concrete, or fuel to operate machinery or equipment.

E. The Contractor may seek reimbursement at the same time as, or subsequent to, the Application for Payment is made for the properties that were taxed. The Contractor shall not file for reimbursement for sales taxes before the Contractor has the right to file an Application for Payment for properties that were taxed.

F. Sales taxes paid by Subcontractors should be detailed on the form "Reimbursable Sales and Use Tax Statement by Subcontractor" (see Appendix H). The Subcontractor completes and signs the form and provides the form to the Contractor. The Contractor submits all sales tax forms with the Contractor's pay application for the properties listed on that form. The City of Durham will make the reimbursement payable to the Contractor.

Except for the differences listed above, the answers to all questions on this page still apply whether the Subcontractor or the Contractor completes and signs the form.

G. Contractor shall include all requests for reimbursement of North Carolina Sales and Use with Applications for Payment. No Sales or Use taxes shall be reimbursed to the Contractor after Owner issues final payment.

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

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

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

~~3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.~~

3. As used in this Paragraph 6.11, 'occupant' includes any person, firm, or corporation, whether present as a licensee, invitee, lessee, or sublessee of any tier or level.

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

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work

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

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

E. Where the Site is located on private property, Contractor shall take special care to restore the Site after construction is completed. All costs for this private property restoration shall be included in itemized unit prices. Restoration may include, but is not limited to, returning the Site to its original condition. Additional effort may be required to restore the Site. The Engineer or Resident Project Representative shall determine whether a Site has been adequately restored.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

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

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

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

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

E. Existing Utilities

1. The City of Durham and Engineer have, to the best of their ability, shown the existing utilities and obstructions (water, sewer, electrical, gas, telephone, storm drainage, etc.) that may affect the Work. City of Durham Water & Sewer Construction Specifications require that Contractor shall, at Contractor's expense, locate all existing utilities that may be encountered during the Work. Contractor shall make every effort to avoid damage or disruption of services during the Work.

2. Contractor shall contact the North Carolina One Call Center to coordinate existing utility location prior to commencement of any Work.

a. North Carolina One Call Center, (800) 632-4949, www.ncocc.org.

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued. Contractor shall promptly report in writing to Owner and Engineer all accidents or incidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, or serious property damage is caused, Contractor shall report the accident or incident immediately by telephone or messenger to Owner and Engineer. Contractor shall give Owner and Engineer reasonable advance notice before using or placing explosives or other hazardous materials or equipment on the Site.

6.17 *Shop Drawings and Samples*

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

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

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

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accor-

dance with the acceptable schedule of Shop Drawings and Sample submittals.

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

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

C. Submittal Procedures

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

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

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

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

submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

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

E. Resubmittal Procedures

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

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner, whether or not a Claim is pending. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, whether or not a Claim is pending, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

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

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

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

~~A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work~~

~~itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.~~

A. To the maximum extent allowed by Laws and Regulations, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of, performance of the Work as a result of acts or omissions of Contractor, any Subcontractor, any Supplier, or any person or organization directly or indirectly employed by any of them or any entity for whose acts any of them may be liable. In performing its duties under this Paragraph 6.20.A, Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to Owner.

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

B. Definitions: As used in Paragraph 6.20.A above and Paragraphs 6.20.C and 6.20.D below:

1. 'Charges' means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses. Included within 'Charges' are:

a. interest and reasonable attorneys' fees assessed as part of any such item;

b. amounts for alleged violations of sedimentation pollution or other environmental or pollution laws and regulations -- including any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items or materials that are involved in performance of the Work;

c. amounts related to Hazardous Environmental Conditions; and

d. amounts related to alleged infringement of patent rights, trade secrets, proprietary information, or copyrights.

2. 'Indemnitees' means Owner and Engineer and the officers, officials, independent contractors, agents, and employees of Owner and Engineer, but does not include Contractor.

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

~~1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or~~

~~2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.~~

C. Limitations of Contractor's Obligation: Neither Paragraph 6.20.A nor any other provision of the Contract Documents shall be construed to require Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

D. Nothing in Paragraphs 6.20.A, 6.20.B, or 6.20.C shall affect any warranties in favor of the Owner. This Paragraph 6.20.D is in addition to, and Paragraphs 6.20.A and 6.20.B above shall be construed separately from, any other indemnification provisions that may be in the Contract Documents. This Paragraph 6.20 shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Contract, but this sentence does not imply that other provisions in the Contract Documents do not survive termination.

6.21 Delegation of Professional Design Services

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

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

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

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

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

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 Related Work at Site

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

~~1. written notice thereof will be given to Contractor prior to starting any such other work; and~~

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

A. Owner may perform other work at or affecting the Site by Owner's own forces or let other direct contracts therefor, or have other work performed at or affecting the Site by utility owners.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of

materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies not reasonably discoverable by said inspection in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in ~~Supplementary Conditions~~ Article 7:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in ~~the Supplementary Conditions~~ Article 7, Owner shall have sole authority and responsibility for such coordination.

7.03 Legal Relationships

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

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

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

7.04 Other Work

A. The Agreement, Paragraph 1.10.H.3, stipulates any other work on the Site at the time of Notice to Proceed known to the City of Durham and the Engineer.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

~~8.01 Communications to Contractor~~

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

8.02 Replacement of Engineer

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

A. If Owner appoints a substitute Engineer, the substitute Engineer shall have the same status under the Contract Documents as the former Engineer.

8.03 Furnish Data

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

8.04 Pay When Due

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

8.05 Lands and Easements; Reports and Tests

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

8.06 Insurance

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in ~~the Supplementary Conditions~~ Article 8.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer. The action of the Engineer in performance of these duties shall not be construed to make the Engineer the agent for the Owner with respect to changes in the Cost or the Work or changes in the Contract Documents.

9.02 *Visits to Site*

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

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

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in ~~the Supplementary Conditions~~ Article 9, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in ~~the Supplementary Conditions~~ Article 9.

B. The Resident Project Representative will serve as Engineer's liaison with Contractor, working principally through Contractor's Superintendent to assist such Superintendent in understanding the intent of the Contract Documents.

C. The Resident Project Representative shall have the following authority, to the extent that Engineer has such authority: to conduct on-site observations of the Work in progress to confirm that it is proceeding in accordance with the Contract Documents; to verify that

tests, equipment, and systems start-ups and maintenance instructions are conducted as required by the Contract Documents; and to disapprove and reject defective Work in accordance with the Contract Documents, including Article 13. No approval, inspection, failure to reject, or other action or failure to act by the Resident Project Representative shall reduce or waive Owner's right to non-defective Work that meets the requirements of the Contract Documents.

D. Except upon written instructions of Engineer and Owner, the Resident Project Representative shall not:

1. authorize any deviation from the Contract Documents or approve any substitute materials or equipment;

2. exceed limitations of Engineer's authority as set forth in the Contract Documents;

3. undertake any of the responsibilities of Contractor, Subcontractors, or Contractor's Superintendent, or expedite the Work;

4. advise on or issue directions relative to any aspect of the means, methods, sequences, techniques, or procedures of construction unless such is specifically called for in the Contract; or

5. advise on or issue directions as to safety precautions and programs in connection with the Work.

E. Paragraph 9.03.D shall not be construed to expand the Resident Project Representative's authority.

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the

Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

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

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

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

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

9.07 *Determinations for Unit Price Work*

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

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

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

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

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

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

9.09 *Limitations on Engineer's Authority and Responsibilities*

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

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

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

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

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

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

C. The Owner reserves the right to add to the original scope of Unit Price Work of the Contract upon the same terms and at the same unit prices included in the Agreement for all unit item additions, provided that such additions shall not result in an increase of more than fifty percent (50%) of the original Contract Price. The Contractor may be entitled to an extension in the Contract Times with the addition of Unit Price Work.

D. The Contractor shall perform emergency Work as required by the City of Durham. In such instances, the Engineer or Resident Project Representative shall give written notice to the Contractor for each instance of emergency Work. The Contractor shall perform all emergency Work within seventy-two (72) hours of the written notice. The City may perform (or engage another contractor to perform) emergency Work, at the Contractor's expense, if the Contractor fails to perform emergency Work within the time limit. If the City performs (or engages another contractor to perform) the following conditions apply:

1. if emergency Work is not a Unit Price Work item, the City shall charge all costs and expenses of the emergency Work, plus the City's then-current overhead charge to the Contractor and deduct those amounts from any money due to Contractor on the then-current or then-future Applications for Payment; and

2. if the emergency Work is a Unit Price Work Item, the City will charge all applicable emergency Work unit costs, plus an administrative and overhead charge of one hundred dollars (\$100.00) per instance to the Contractor and deduct those amounts from any money due to Contractor on the then-current or then-future Applications for Payment.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in the Contract Documents, including Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

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

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

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

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer or Owner allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer or Owner allows additional time).

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

1. deny the Claim in whole or in part,

2. approve the Claim, or

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

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

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor:

1. invokes the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial, or

2. if the dispute resolution procedures set forth in Article 16 are not invoked and the appealing party institutes a formal proceeding, within 30 days of such action or denial, in a forum of competent jurisdiction (allowed under the Contract) to exercise such rights or remedies as the appealing party may have with respect to the Engineer's decision, unless otherwise agreed in writing by Owner and Contractor. The City Manager has

authority to enter into a written agreement extending the time period during which either party may institute such a formal proceeding.

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

G. Mitigation of Damages: Once a party recognizes that it has grounds for a Claim, dispute, or other matter that may be submitted to Engineer (whether or not it may also be submitted to the other party), it shall use its best efforts to furnish Engineer and the other party, as expeditiously as possible, with notice of the potential Claim, dispute, or other matter. The potential claimant shall cooperate with Engineer and the party against whom the potential Claim, dispute, or other matter may be made in an effort to mitigate damages, delay, and other adverse consequences arising out of the condition which is the cause of the potential claim, dispute, or other matter. This duty to mitigate continues after the notice of Claim, dispute, or other matter is actually delivered.

H. These requirements, including as to time, are of the essence of the Contract Documents. No course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work, and no assertion that the Owner has been unjustly enriched by any alteration or addition to the Work shall be the basis for any Claim to an increase in the Contract Price. In addition, all of Paragraphs 9.08.C and 9.08.D shall apply to those claims.

10.06 Change Orders

A. Unless the Contract Documents or the Change Order provides otherwise, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the construction schedule. If a Change Order increases the Contract Price, Contractor shall include the Work covered by such Change Orders in Applications for Payment.

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

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional

or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of overtime or of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

~~4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.~~

5. Supplemental costs including the following:

~~a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's~~

~~employees incurred in discharge of duties connected with the Work.~~

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. These rates shall include all fuel, lubricants, insurance, etc. Equipment rental charges shall not exceed the prorated monthly rental rates listed in the edition of the 'Compilation of Rental Rates for Construction Equipment', as published by the Associated Equipment Distributors, which is current when the equipment rental begins. Charges per hour shall be determined by dividing the monthly rates by 176. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

~~f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.~~

g. The cost of utilities, fuel, and sanitary facilities at the Site.

~~h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.~~

~~i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.~~

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish

and maintain records thereof in accordance with generally accepted accounting and in accordance with Owner's and Engineer's instructions practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data. The Owner and Engineer may specify additional or different requirements in accordance with the preceding sentence, but unless they so specify, the following is required in order to support a determination of cost of Work pursuant to Paragraph 11.01:

1. For costs under Paragraph 11.01.A.1, for each person who worked on the additional Work: a statement showing his or her job title, hourly rate paid or other method of compensation, other amounts described under Paragraph 11.01.A.1 that were paid, and the net change in the number of hours worked attributable to the change in the Work.

2. For costs under Paragraph 11.01.A.2, dated receipts from the Subcontractors and/or Sub-subcontractors. The receipts must acknowledge the Contractor's payment, identify the materials, supplies, equipment and show the name of the Owner's Project.

3. For costs under Paragraph 11.01.A.5.c, dated receipts from the rental the Subcontractors and/or Sub-subcontractors. The receipts must acknowledge the Contractor's payment, identify the machinery and equipment, and show the name of the Owner's Project, the rental rate, and the number of hours, days, miles, or other basis of the charge. If the Contractor supplies the machinery or equipment, the statement must show the rental rate and the number of hours, days, miles, or other basis of the charge, and the rental rate must not exceed the market rental rate.

4. For costs under Paragraph 11.01.A.5.i, written proof of a net change in the amount paid by the Contractor attributable to the change in the Work. For bonds, the proof must include the invoice or statement from the surety or its agent showing that it is attributable to the change in the Work.

11.02 Allowances

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

B. Cash Allowances

1. Contractor agrees that:

a. 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

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance

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

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

11.03 Unit Price Work

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

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. If Owner changes any estimate of quantity before the Agreement is executed, it may substitute the new estimated quantity in those calculations. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead, ~~and~~ profit, and cost for coordinating the Work with the City of Durham for each separately identified item.

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

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner

is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

E. Each unit price shall be deemed to include an amount considered by the Contractor to be adequate to cover all construction surveying and existing utility location required to complete the Work as specified, or as directed by the Engineer, for each separately identified item.

F. This Paragraph 11.03.F applies except to the extent if any that the Bidding Documents specify otherwise.

1. Unit prices, if any, shall apply to Work done pursuant to Change Orders and to Work Change Directives.

2. In addition to Paragraph 11.03.F.1, it is agreed:

a. If unit price items are included in the Contract Documents for Work other than Work done pursuant to Change Orders and to Work Change Directives, it is also agreed that the Contract Price was calculated on the assumption that certain estimated quantities of unit price items will be used in the Work. Those estimated quantities are stated in the Contract Documents. The unit price multiplied by the quantity is referred to as the 'extension.'

b. If the actual extension of a unit price item is less than the estimated extension, the Contract Price shall be reduced accordingly.

c. The actual extension of each unit price item shall not exceed the estimated extension for that item unless the Contractor has received advance written approval from the Engineer to exceed the estimated quantity for that item. That approval may be limited in the Engineer's discretion. If that approval is given, the Contract Price shall be adjusted as follows:

1) If the actual quantity of a unit price item is more than the estimated quantity, the Contract Price shall be increased to reflect the difference between the actual and the estimated quantities.

2) If approval is not given, the Contractor shall not be obligated to use the quantity of that unit price item that exceeds the approved quantity, and a Change Order or Work Change Directive shall be executed to reflect the changes in the Work resulting from the actual quantity of the item that is used.

3) If the Contract Documents explicitly and clearly state that no further approval from the Engineer or the Owner is required for the Contractor to exceed the estimated quantity of specified unit price items, then it is agreed that the Contract Price shall be adjusted to reflect the actual quantities of those items without the necessity of further approval.

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

12.01 *Change of Contract Price*

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

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

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

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be ~~15 percent~~ ten percent (10%) and shall not be applied to payroll taxes, social security contributions, or unemployment taxes;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of ~~15 percent~~ ten percent (10%) of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 (excluding payroll taxes, social security contributions, and unemployment taxes) and that ~~any higher the next higher~~ tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

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

12.03 *Delays*

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

weather conditions, or acts of God. ~~Nothing in Article 12 or any other provision of the Contract Documents is intended to forbid or limit compensable damages for delays caused solely by the Owner or the Owner's agent, and any provision to the contrary shall be construed to comply with this Paragraph 12.03.A. For purposes of this Paragraph 12.03.A, 'Owner' or the 'Owner's agent' does not include prime contractors or subcontractors.~~

~~B. If Owner or Owner's agent, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the ~~Contract Price or the~~ Contract Times, ~~or both~~. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.~~

C If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C. Except to the extent, if any, that it may otherwise be provided in the Contract Documents, Contractor's sole remedy for any of the following:

1. delay in the commencement, prosecution, or completion of the Work,

2. hindrance or obstruction in the performance of the Work,

3. loss of productivity, or

4. other similar delays and losses (said 1, 2, 3, and 4 being collectively referred to in this Paragraph 12.03 as 'Such Delays').

Whether or not Such Delays are foreseeable, shall be an extension of the Contract Times if permitted and granted under this Article 12. To the extent allowed by the Contract Documents, Contractor shall be entitled to no other compensation or recovery of any damages in connection with any Such Delays, including consequential damages, lost opportunity costs, impact damages, or other similar remuneration. To the extent of conflict, the Contract or Agreement as signed by the Owner and Contractor shall control this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

F. Adjustment of Contract Times for weather related delays shall be as stipulated in the Agreement, Paragraph 1.4.D.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

~~A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.~~

A. Contractor shall employ and pay for all inspections and testing services required by the Contract Documents, except those for which the Contract Documents specifically call for Owner to employ and pay.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all the inspections, tests, or approvals required by the Contract Documents, except:

~~1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;~~

~~2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and~~

~~3. as otherwise specifically provided in the Contract Documents.~~

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

G. The City of Durham may engage an independent consultant for the direct inspection and administration of any or all of the Work to be performed in the Contract. This consultant shall act on the behalf of the City of Durham.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, or contrary to the Contract Documents, or before required inspections, tests, or approvals, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request,

shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Contractor shall not be entitled to any increase in Contract Times because of the time involved in such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05. However, if such Work had been prematurely covered, the preceding sentence shall not apply, and Contractor shall have no such rights.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but

not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others). Engineer and Owner may reject any defective Work, even if inspected and paid for, except to the extent accepted under Paragraph 13.08. A failure to disapprove or reject such defective Work does not constitute an acceptance.

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly (but in any event, commencing within thirty (30) days after receipt of said instructions and proceeding promptly to completion), without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly (but in any event, commencing within 30 days after receipt of said instructions and proceeding promptly to completion) comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications. If prior to the date of Substantial Completion, Contractor or any entity for which Contractor is responsible uses or damages any portion of the Work, then Contractor, at no expense to Owner, shall cause such portion, system, device, or item to be restored (whether by replacement, repair, or otherwise) to the condition the item was required to be in, if such use or damage had not occurred. Nothing herein shall reduce the duty of Contractor with respect to such item in order to obtain a final payment.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

F. Establishment of the one (1) year periods in this Paragraph 13.07 relates only to the specific obligation of Contractor to take certain actions relating to defective Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs

after such recommendation, an appropriate amount will be paid by Contractor to Owner.

B. An acceptance of defective Work is not effective as an acceptance unless it specifically describes the condition that is defective and contains substantially the following statement: 'The Owner accepts [such condition] despite its being defective.'

13.09 *Owner May Correct Defective Work*

A. If Contractor fails ~~within a reasonable time~~ after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work some or all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow and provide Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site and storage locations referred to in the preceding sentence to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by

Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein including the transportation to the Work Site, 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.

4. Contractor shall submit the Subcontractor Monthly Record of Payment Report form with each Application for Payment, except for the initial and final Application for Payment. The Contractor shall submit the Final Subcontracting Report form with the final Application for Payment. Failure to submit these forms, which are provided in Appendix C, may be a basis for denying payment.

B. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

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

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

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 moneys 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. ~~the Work is defective~~ any of the Work, whether or not paid for, is defective, except to the extent accepted under Paragraph 13.08, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09;~~or~~

d. Engineer has actual knowledge of or reasonable grounds to believe in the occurrence of any of the events enumerated in Paragraph 15.02.A.

e. there are reasonable grounds to believe that the Work cannot be completed for the unpaid balance of the Contract Price; or

f. Contractor is anticipated to owe damages or other amounts to Owner.

C. Payment Becomes Due

1. ~~Ten~~ Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off, including any cost or expense related to defective Work, against the amount recommended;~~or~~

d. Owner has actual knowledge of or reasonable grounds to believe in the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

e. any of the property and casualty insurance requirements enumerated in Article 5 are not complied with at their renewal dates.

f. there are reasonable grounds to believe that the Work cannot be completed for the unpaid balance of the Contract Price; or

g. Contractor is anticipated to owe damages or other amounts to Owner.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld, as determined in a competent jurisdiction having binding authority, shall be treated as an amount due as determined by Paragraph 14.02.C.1.

4. Failure of Owner to refuse to make payment does not waive Owner's rights under the Contract Documents.

14.03 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the

Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

B. The Application for Payment shall be accompanied by such data, satisfactory to Owner, as will establish Owner's title to the material and equipment and protect his interest therein, including applicable insurance. Each subsequent Application for Payment shall include an Affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment.

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected), including the time within which each of those items shall be completed or corrected, reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to

Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

~~4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.~~

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in

writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work

has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

2. Without extra charge to Contractor, Engineer will make only two (2) such inspections to determine final completion. If Engineer is not able to make the representations and findings required to recommend final payment, successive inspections requested by Contractor shall be charged to Contractor.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 Final Completion Delayed

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. ~~a waiver of all Claims by Owner against Contractor, except~~ no waiver of any claims, or the right to make any claims, by Owner against Contractor, including

Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

14.10 Prompt Payment to Subcontractors

A. Within seven (7) days of receipt by Contractor of each payment from the City of Durham under this Contract, the Contractor shall pay all Subcontractors (including Suppliers and others) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than seven (7) days after receipt of payment by the Contractor from the City under this Contract, the Contractor shall pay the Subcontractor interest, beginning on the eighth (8th) day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this Paragraph 14.10.A directly against the Contractor, but not against the City of Durham. If the Engineer determines that it is appropriate to enforce this Paragraph 14.10.A, the City of Durham may withhold the sums estimated by the Engineer to be sufficient to pay this interest from progress or final payments to the Contractor.

B. Nothing in this Paragraph 14.10 shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the Subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another Subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage consistent with the Agreement.

C. The Engineer may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Engineer regarding the status of their accounts with the Contractor. The statements shall be in such format as the Engineer reasonably requires, including notarization if so specified.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which, or the event after which, Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05. No adjustment shall be made to the extent that performance is, was, or would have been suspended, delayed, or interrupted directly or indirectly by Contractor or any Entity for which Contractor is responsible. The Contract Price shall not be adjusted except to the extent that the total of such suspensions exceeds thirty (30) days and after excluding such thirty day period.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, ~~including fair and reasonable sums for overhead and profit on such Work as~~ determined in Article 11;

2. expenses sustained prior to the effective date of termination in ~~performing services and furnishing labor, ordering 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;~~ the Owner shall have the options detailed in Paragraphs 15.03.A.2.a through 15.03.A.2.d;

a. Upon seven (7) days of receipt of the notice of termination for convenience Contractor shall provide evidence of materials ordered as described in Paragraph 15.03.A.2 including an itemized list, cost, order and delivery dates, and all terms or conditions (including ordering, canceling, or restocking charges).

b. Owner may direct the Contractor to cancel any one or more orders, in which case the Owner shall be liable for cancellation and restocking charges and other charges properly attributable to the cancellation; or

c. Owner may direct the Contractor to keep any one or more orders in effect and/or to assign any one or more orders to the Owner, in which case the Owner shall be responsible for bearing the costs of the order.

d. Within ten (10) days of the Owner's receiving the evidence described in Paragraph 15.03.A.2.a, the Owner shall give the Contractor notice of which options it exercises under Paragraphs 15.03.A.2.b or 15.03.A.2.c.

~~3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and~~

3. The Owner shall pay the Contractor a termination fee of one hundred dollars (\$100.00) in addition to other amounts due pursuant to this Paragraph 15.03.

~~4. reasonable expenses directly attributable to termination.~~

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally

determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

15.05 Protection and Preservation of the Work

A. Upon suspension (Paragraph 15.01), termination (Paragraphs 15.02, 15.03, and 15.04), or stopping Work (Paragraph 15.04):

1. Contractor shall take actions necessary for the protection and preservation of the Work, and Site, including those actions required by the Contract, except to the extent otherwise directed by the Engineer; and

2. Contractor shall erect and leave in place barricades, lights, and other safety devices as are appropriate for the protection of the public, including those devices required by the Contract, except to the extent otherwise directed by the Engineer.

B. If the Contractor performs work pursuant to directions given by the Engineer as described in Paragraph 15.05.A for the protection and preservation of the Work or of the public, Owner shall pay the Contractor for such protection and preservation work to the extent that it is greater than the Contractor would have done during or at the end of a work day had the contract not been suspended or terminated or the Work stopped.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

~~A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for~~

~~mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.~~

A. Any party allowed to use the dispute resolution process adopted by the State Building Commission pursuant to G. S. 143-135.26(11) and G. S. 143-128(F1) may participate in mediation pursuant to the dispute resolution process as a precondition to initiating litigation concerning the dispute. The amount of \$15,000 or more must be at issue before a party may require other parties to participate in the dispute resolution process. The costs of the dispute resolution process shall be divided between the parties to the dispute with at least one-third of the cost to be paid by the Owner, if the Owner is a party to the dispute.

~~B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.~~

~~C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:~~

~~1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or~~

~~2. agrees with the other party to submit the Claim to another dispute resolution process; or~~

~~3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.~~

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered by facsimile or in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

B. If a party is notified of a replacement person for purpose of getting notice, then notices afterwards shall be directed to the replacement person. Written notices shall be deemed to have been duly served, made, and received, and receipt thereof completed, if:

1. delivered in person to the individual or to that individual's receptionist; or

2. mailed by registered or certified mail to the last business address known to the party giving notice; or

3. faxed to the last fax number known to the party giving notice, provided that the fax transmission must be completed.

C. Written notices to the Owner must be directed to the Owner's representative, provided that if no individual is designated as the Owner's representative, then written notices must be directed to the City Manager. As used in this Paragraph 17.01, the word 'notice' includes 'request.'

D. The notice will be deemed served, made, and received, and receipt thereof completed, on the earlier of:

1. the date delivered in person; or

2. three (3) days after placing in the custody of the U. S. Postal Service; or

3. the date the fax transmission was completed.

E. Address of Surety: Unless the surety provides a different address as provided in Paragraph 17.01, notice to a surety may be sent to the address shown on the performance bond; if no address for the surety is shown on the performance bond, the surety's address provided by the N. C. Department of Insurance shall suffice; and if the Department of Insurance lacks an address, the last-known address of the attorney-in-fact who signed the performance bond shall suffice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. As used in the preceding sentence, a 'legal holiday by the law of the applicable jurisdiction' is a holiday observed by city government of the City of Durham. See City Code Section 42-16 for information on such holidays.

17.03 *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 Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

17.07 *Effect on Other Rights*

A. The Contract Documents shall not be construed to create a cause of action against Owner and in favor of any person, firm, or corporation, other than Contractor. The Contract Documents shall not be construed to create a cause of action against Engineer and in favor of any person, firm, or corporation, other than Owner. The Contract Documents are not intended to create a defense, except by Contractor, to any cause of action that may be brought by Owner. The recitation of duties, or limitations of duties, in the Contract Documents (e.g., Paragraph 9.09) of Engineer or Engineer's consultants, representatives, and assistants, shall not be construed to reduce Owner's rights against Engineer or to reduce Engineer's duties to Owner. No action or failure to act by Owner shall constitute a waiver of a right except to the extent specifically agreed in writing. If Owner waives a right, that waiver shall not imply other waivers of that right. If liquidated damages are assessable against the Contractor, Owner may, in its discretion, waive the imposition of some or all of the liquidated damages against the Contractor. That waiver shall be valid only if done by a writing signed by the City Manager or an Assistant City Manager, and the waiver must refer specifically to 'liquidated damages.' That waiver shall not constitute an extension of the Contract Time.

B. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations and representations. Except as specifically otherwise provided, the Agreement is not intended to benefit, or to create a cause of action in favor of, any person, firm, or corporation, other than Owner and Contractor. Oral statements by anyone, including Owner's employees, agents, and Engineer, whether made before or after the execution of the Agreement, shall not be binding on Owner and shall not reduce Owner's rights under the Contract Documents.

17.08 Place of Project

A. Choice of Law and Forum: The place of the Project is North Carolina. This Contract shall be deemed made in Durham, North Carolina. This Contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This Paragraph shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Paragraph.

17.09 Equal Employment Opportunity (EEO)

A. During the performance of this Contract the Contractor agrees as follows:

1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants

for employment, notices setting forth these EEO provisions:

2. Contractor shall in all solicitations or advertisement for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap;

3. Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding;

4. in the event of Contractor's noncompliance with these EEO provisions, the City of Durham may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts; and

5. unless exempted by the City Council of the City of Durham, Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this Contract and in every subcontract related to this Contract so that these EEO provisions will be binding upon such Subcontractors and Suppliers.

B. City Policy: The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and suppliers under City contracts.

17.10 Americans with Disabilities Act (ADA)

A. Notice Under the Americans with Disabilities Act - A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, or ADA@durhamnc.gov, as soon as possible but no later than forty-eight (48) hours before the event or deadline date.

THIS PAGE LEFT INTENTIONALLY BLANK

CONTRACT PROVISIONS

GENERAL PROVISIONS

This work shall consist of furnishing all labor, equipment, and materials to connect in the City of Durham, located in Durham County, North Carolina. The project is located on Amber Place, Brunson Street, Chalmers Street, Lang Street, Leonard Drive, Omah Street and Turner Street.

The quantities shown in the itemized proposal for the project are considered to be approximate only and are given as the basis for comparison of bids. The City of Durham may increase or decrease the quantity of any item or portion of the work as may be deemed necessary or expedient. An increase or decrease in the quantity of any item will not be regarded as sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for in the contract.

All work and materials shall be in accordance with the provisions of the General Guidelines of this contract, the Project Special Provisions, the *North Carolina Department of Transportation Standard Specifications for Roads and Structures*, the *North Carolina Department of Transportation Roadway Standards Drawings*, the current edition of the *Manual of Uniform Traffic Control Devices (MUTCD)*, the *City of Durham, Public Works Department Engineering Division – Construction Specifications*, the *City of Durham, Dept. of Water Management, Sewer Standard Details*. These manuals may be found on the internet at:

<https://connect.ncdot.gov/resources/Specifications/StandSpecLibrary/2018%20Standard%20Specifications%20for%20Roads%20and%20Structures.pdf>

<https://connect.ncdot.gov/resources/Specifications/Pages/2018-Roadway-Standard-Drawings.aspx>

<http://mutcd.fhwa.dot.gov/>

<https://durhamnc.gov/DocumentCenter/View/15301/Water-and-Sewer-Specifications?bidId=>

<https://durhamnc.gov/DocumentCenter/View/15304/Sewer-Details?bidId=>

NCDOT STANDARD NOTES

- A. *Standard Specifications* – The 2018 North Carolina Department of Transportation *Standard Specifications for Roads and Structures*, herein referred to as the ‘Standard Specifications’, and the 2018 *Roadway Standard Drawings*, shall apply to all portions of this project except as may be modified by this document.
- B. *Award of Contract* - The contract will be awarded to the lowest responsible, responsive bidder. Alternate items will not be considered in determining the low bidder and will only be evaluated after the award of the contract is made.
- C. *Contractor Licensing* – Non-licensed contractors are permitted to submit bids; however, they must be licensed prior to performing any work. Bidders are permitted 60 days, after bid opening, to become licensed by the North Carolina Licensing Board. If they fail to

do so within 60 days, their bid will be considered non-responsive and will be rejected. If the successful bidder does not hold the proper license to perform any plumbing, heating, air conditioning, or electrical work in this contract, he will be required to sublet such work to a contractor properly licensed in accordance with *Article 2 of Chapter 87 of the General Statutes* (licensing of heating, plumbing, and air conditioning contractors) and *Article 4 of Chapter 87 of the General Statutes* (licensing of electrical contractors).

- D. Bonds - Please note that all Bid Bonds, Payment Bonds, and Performance Bonds required for this project, shall be those found in Appendices E and G.
- E. Liability Insurance – In addition to any insurance requirements as may be required by the LGA, the Contractor is obligated to comply with Article 107-15 of the *Standard Specifications* including the dollar limits set forth.
- F. Buy America – This project shall be governed by the Buy America requirements, for the use of domestic steel and iron products, as outlined in the *Standard Specifications*.
- G. Proprietary Items - When a proprietary (brand name) product, whether material, equipment or procedure, are specified in the plans or specifications, they are used only to denote the style, type, character, and quality desired of the product. They do not restrict the bidder from proposing other brands, makes, or manufacturers, which are determined to be of equal quality. The approval, or disapproval of those products, will be made by the Engineer prior to allowing those product(s) or material(s) to be incorporated into the work.
- H. Traffic Control –The requirements of the *Manual on Uniform Traffic Control Devices (MUTCD) – FHWA*, as amended by the *NCDOT Supplement to MUTCD*, shall apply. Traffic Control, both vehicular and pedestrian, shall be maintained throughout the project as required by these specifications as modified by the project plans or special provisions.

PRE-BID CONFERENCE

In order for all prospective bidders to have an extensive knowledge of the project, all prospective bidders may attend the virtual pre-bid conference at 3:00 PM on Thursday 08/27/2020. The pre-bid meeting for this project will be a Zoom meeting for which the details will be provided 24 hours in advance, in the project webpage:

<https://durhamnc.gov/4256/2021-Petition-Streets-ST-286>

The pre-bid conference will include a thorough discussion of the plans, contract pay items, special provisions, etc.

CONTRACT TIME AND LIQUIDATED DAMAGES:

The date of construction start for this contract is **upon notice to proceed issued by the City Engineer.**

The completion date for this contract is **740 days after the notice to proceed date.**

Except where otherwise provided by the contract, observation periods required by the contract will not be a part of the work to be completed by the completion date and/or intermediate contract times stated in the contract. The acceptable completion of the observation periods that extend beyond the final completion date shall be a part of the work covered by the performance and payment bonds.

The liquidated damages for this contract are **Four Hundred Dollars (\$400.00)** per calendar day.

DAY AND TIME RESTRICTIONS

**Monday through Friday
6:00 a.m. to 9:00 a.m.
and
4:00 p.m. to 7:00 p.m.**

**Friday at 7:00 p.m.
through
Monday at 6:00 a.m.**

In addition, the Contractor shall not close or narrow a lane of traffic on **any map**, detain and/or alter the traffic flow on or during holidays, holiday weekends, special events, or any other time when traffic is unusually heavy, including the following schedules:

HOLIDAY AND HOLIDAY WEEKEND LANE CLOSURE RESTRICTIONS

1. For **unexpected occurrence** that creates unusually high traffic volumes, as directed by the Engineer.
2. For **New Year's Day**, between the hours of **6:00 a.m.** December 31st and **9:00 a.m.** January 2nd. If New Year's Day is on a Friday, Saturday, Sunday or Monday, then until **9:00 a.m.** the following Tuesday.
3. For **Easter**, between the hours of **6:00 a.m.** Thursday and **9:00 a.m.** Monday.
4. For **Memorial Day**, between the hours of **6:00 a.m.** Friday and **9:00 a.m.** Tuesday.

5. For **Independence Day**, between the hours of **6:00 a.m.** the day before Independence Day and **9:00 a.m.** the day after Independence Day. If **Independence Day** is on a Friday, Saturday, Sunday or Monday, then between the hours of **6:00 a.m.** the Thursday before Independence Day and **9:00 a.m.** the Tuesday after Independence Day.
6. For **Labor Day**, between the hours of **6:00 a.m.** Friday and **9:00 a.m.** Tuesday.
7. For **Thanksgiving Day**, between the hours of **6:00 a.m.** Tuesday and **9:00 a.m.** Monday.
8. For **Christmas**, between the hours of **6:00 a.m.** the Friday before the week of Christmas Day and **9:00 a.m.** the following Tuesday after the week of Christmas Day.

Holidays and holiday weekends shall include New Year's, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. The Contractor shall schedule his work so that lane closures will not be required during these periods, unless otherwise directed by the Engineer.

The time of availability for this intermediate contract work shall be the time the Contractor begins to install all traffic control devices for lane closures according to the time restrictions listed herein. The completion time for this intermediate contract work shall be the time the Contractor is required to complete the removal of all traffic control devices for lane closures according to the time restrictions stated above and place traffic in the existing traffic pattern.

TWELVE MONTH GUARANTEE

- (A) The Contractor shall guarantee materials and workmanship against latent and patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve months following the date of final acceptance of the work for maintenance and shall replace such defective materials and workmanship without cost to **CITY OF DURHAM**. The Contractor will not be responsible for damage due to faulty design, normal wear and tear, for negligence on the part of **CITY OF DURHAM**, and/or for use in excess of the design.
- (B) Where items of equipment or material carry a manufacturer's guarantee for any period in excess of twelve months, then the manufacturer's guarantee shall apply for that particular piece of equipment or material. **CITY OF DURHAM**'s first remedy shall be through the manufacturer although the Contractor is responsible for invoking the warranted repair work with the manufacturer. The Contractor's responsibility shall be limited to the term of the manufacturer's guarantee. **CITY OF DURHAM** would be afforded the same warranty as provided by the Manufacturer.

This guarantee provision shall be invoked only for major components of work in which the Contractor would be wholly responsible for under the terms of the contract. Examples would include pavement structures, bridge components, and sign structures. This provision will not be used as a mechanism to force the Contractor to return to the project to make repairs or perform

additional work that **CITY OF DURHAM** would normally compensate the Contractor for. In addition, routine maintenance activities (i.e. mowing grass, debris removal, ruts in earth shoulders,) are not parts of this guarantee.

Appropriate provisions of the payment and/or performance bonds shall cover this guarantee for the project.

SPECIAL PROVISIONS-ROADWAY

CLEARING AND GRUBBING - METHOD II:

Perform clearing on this project to the limits established by Method “II” shown on Standard Drawing No. 200.02 of the *2018 Roadway Standard Drawings*. Conventional clearing methods may be used except where permit drawings or conditions have been included in the proposal which require certain areas to be cleared by hand methods.

CLASS IV SUBGRADE STABILIZATION:

Excavation is incidental to the Class IV subgrade stabilization

INCIDENTAL STONE BASE:

Description

Place incidental stone base on driveways, mailboxes, etc. immediately after paving and do not have the paving operations exceed stone base placement by more than one week without written permission of the Engineer.

Materials and Construction

Provide and place incidental stone base in accordance with Section 545 of the *2018 Standard Specifications*.

Measurement and Payment

Incidental Stone Base will be measured and paid in accordance with Article 545-6 of the *2018 Standard Specifications*.

HIGH STRENGTH CONCRETE FOR DRIVEWAYS:

Use high early strength concrete for all driveways shown in the plans and as directed by the Engineer. Provide high early strength concrete that meets the requirements of Article 1000-5 of the *2012 Standard Specifications*.

Measurement and payment will be in accordance with Section 848 of the *2012 Standard Specifications*.

SHOULDER AND FILL SLOPE MATERIAL:

Description

Perform the required shoulder and slope construction for this project in accordance with the applicable requirements of Section 560 and Section 235 of the *2018 Standard Specifications*.

Measurement and Payment

Where the material has been obtained from an authorized stockpile or from a borrow source and *Borrow Excavation* is not included in the contract, no direct payment will be made for this work, as the cost of this work will be part of the work being paid at the contract lump sum price for *Grading*. If *Borrow Excavation* is included in this contract and the material has been obtained from an authorized stockpile or from a borrow source, measurement and payment will be as provided in Section 230 of the *2018 Standard Specifications* for *Borrow Excavation*.

ASPHALT CONCRETE PLANT MIX PAVEMENTS:

Revise the *2018 Standard Specifications* as follows:

Page 6-17, Table 610-1, MIXING TEMPERATURE AT THE ASPHALT PLANT, replace with the following:

TABLE 610-1 MIXING TEMPERATURE AT THE ASPHALT PLANT	
Binder Grade	JMF Temperature
PG 58-28; PG 64-22	250 - 290°F
PG 76-22	300 - 325°F

Page 6-17, Subarticle 610-3(C), Job Mix Formula (JMF), lines 38-39, delete the fourth paragraph.

Page 6-18, Subarticle 610-3(C), Job Mix Formula (JMF), line 12, replace “SF9.5A” with “S9.5B”.

Page 6-18, Table 610-3, MIX DESIGN CRITERIA, replace with the following:

Mix Type	Design ESALs millions ^A	Binder PG Grade ^B	Compaction Levels		Max. Rut Depth (mm)	Volumetric Properties			
			Gmm @			VMA	VTM	VFA	%Gmm @ Nini
			Nini	Ndes		% Min.	%	Min.-Max.	
S4.75A	< 1	64 - 22	6	50	11.5	16.0	4.0 - 6.0	65 - 80	≤ 91.5
S9.5B	0 - 3	64 - 22	6	50	9.5	16.0	3.0 - 5.0	70 - 80	≤ 91.5
S9.5C	3 - 30	64 - 22	7	65	6.5	15.5	3.0 - 5.0	65 - 78	≤ 90.5
S9.5D	> 30	76 - 22	8	100	4.5	15.5	3.0 - 5.0	65 - 78	≤ 90.0
I19.0C	ALL	64 - 22	7	65	-	13.5	3.0 - 5.0	65 - 78	≤ 90.5
B25.0C	ALL	64 - 22	7	65	-	12.5	3.0 - 5.0	65 - 78	≤ 90.5
Design Parameter						Design Criteria			
All Mix Types	Dust to Binder Ratio ($P_{0.075} / P_{be}$)					0.6 - 1.4 ^C			
	Tensile Strength Ratio (TSR) ^D					85% Min. ^E			

- A. Based on 20 year design traffic.
- B. Volumetric Properties based on specimens compacted to N_{des} as modified by the Department.
- C. Dust to Binder Ratio ($P_{0.075} / P_{be}$) for Type S4.75A is 1.0 - 2.0.
- D. NCDOT-T-283 (No Freeze-Thaw cycle required).
- E. TSR for Type S4.75A & B25.0C mixes is 80% minimum.

Page 6-19, Table 610-5, BINDER GRADE REQUIREMENTS (BASED ON RBR%), replace with the following:

Mix Type	%RBR ≤ 20%	21% ≤ %RBR ≤ 30%	%RBR > 30%
S4.75A, S9.5B, S9.5C, I19.0C, B25.0C	PG 64-22	PG 64-22 ^A	PG 58-28
S9.5D, OGFC	PG 76-22 ^B	n/a	n/a

- A. If the mix contains any amount of RAS, the virgin binder shall be PG 58-28.
- B. Maximum Recycled Binder Replacement (%RBR) is 18% for mixes using PG 76-22 binder.

Page 6-20, Table 610-6, PLACEMENT TEMPERATURES FOR ASPHALT, replace with the following:

Asphalt Concrete Mix Type	Minimum Surface and Air Temperature
B25.0C	35°F
I19.0C	35°F
S4.75A, S9.5B, S9.5C	40°F ^A
S9.5D	50°F

A. If the mix contains any amount of RAS, The virgin binder shall be PG 58-28.

Page 6-23, Table 610-7, DENSITY REQUIREMENTS, replace with the following:

Mix Type	Minimum % G _{mm} (Maximum Specific Gravity)
S4.75A	85.0 ^A
S9.5B	90.0
S9.5C, S9.5D, I19.0C, B25.0C	92.0

A. Compaction to the above specified density will be required when the S4.75A mix is applied at a rate of 100 lbs/sy or higher.

Page 6-32, Article 610-16 MEASUREMENT AND PAYMENT, replace with the following:

Pay Item	Pay Unit
Asphalt Concrete Base Course, Type B25.0C	Ton
Asphalt Concrete Intermediate Course, Type I19.0C	Ton
Asphalt Concrete Surface Course, Type S4.75A	Ton
Asphalt Concrete Surface Course, Type S9.5B	Ton
Asphalt Concrete Surface Course, Type S9.5C	Ton
Asphalt Concrete Surface Course, Type S9.5D	Ton

Page 10-30, Table 1012-1, AGGREGATE CONSENSUS PROPERTIES, replace with the following:

Mix Type	Coarse Aggregate Angularity ^B	Fine Aggregate Angularity % Minimum	Sand Equivalent % Minimum	Flat and Elongated 5 : 1 Ratio % Maximum
<i>Test Method</i>	<i>ASTM D5821</i>	<i>AASHTO T 304</i>	<i>AASHTO T 176</i>	<i>ASTM D4791</i>
S4.75A; S9.5B	75 / -	40	40	-
S9.5C; I19.0C; B25.0C	95 / 90	45	45	10
S9.5D	100 / 100	45	50	10
OGFC	100 / 100	45	45	10
UBWC	100 / 85	45	45	10

A. Requirements apply to the design aggregate blend.

B. 95 / 90 denotes that 95% of the coarse aggregate has one fractured face and 90% has 2 or more fractured faces.

ADJUSTMENT OF MANHOLES:

The Contractor's attention is directed to Section 858-3 of the *2018 Standard Specifications*.

The use of cast iron or steel fittings in the adjustment of manholes will not be permitted on this project except where it is considered by the Engineer to be in the best interest of the Department to allow rings to be used. When rings are permitted for the adjustment of manholes, the rings shall have satisfactory bearing on the existing manhole frames and 50 percent of the circumference shall be tack welded at four equally spaced locations as directed by the Engineer. If the existing covers do not fit the rings, furnish and install new covers at no additional expense to the Department.

ADJUSTMENT OF MANHOLES, METER BOXES, AND VALVE BOXES:

The Contractor's attention is directed to Article 858-3 of the *2018 Standard Specifications*. Cast iron or steel fittings will not be permitted for the adjustment of manholes, meter boxes, and valve boxes on this project.

STREET SIGNS AND MARKERS AND ROUTE MARKERS:

Move any existing street signs, markers, and route markers out of the construction limits of the project and install the street signs and markers and route markers so that they will be visible to the traveling public if there is sufficient right of way for these signs and markers outside of the construction limits.

Near the completion of the project and when so directed by the Engineer, move the signs and markers and install them in their proper location in regard to the finished pavement of the project.

Stockpile any signs or markers that cannot be relocated due to lack of right of way, or any signs and markers that will no longer be applicable after the construction of the project, at locations directed by the Engineer for removal by others.

The Contractor shall be responsible to the owners for any damage to any street signs and markers or route markers during the above described operations.

REMOVAL AND REPLACEMENT OF STREET SIGNS AND MAILBOXES:

Remove and replace mailboxes in accordance with AASHTO Guide for Erecting Mailboxes on Highways and as directed by Project Manager. The Contractor shall be liable to the owner for any damage to any mailbox during the removal and replacement.

Remove and replace street signs, markers, and route markers out of the construction limits of the project and install the street signs and markers and route markers so that they will be visible to the traveling public to the satisfaction of the Project Manager.

Stockpile any signs or markers that cannot be relocated due to lack of right of way, or any signs and markers that will no longer be applicable after the construction of the project, at locations directed by the Project Manager for removal by Others.

The Contractor shall be responsible for any damage to any street signs and markers or route markers during the above described operations.

PRICE ADJUSTMENT - ASPHALT BINDER FOR PLANT MIX:

Price adjustments for asphalt binder for plant mix will be made in accordance with Section 620 of the *2018 Standard Specifications*.

The base price index for asphalt binder for plant mix is \$ **447.61** per ton.

This base price index represents an average of F.O.B. selling prices of asphalt binder at supplier's terminals on **8/1/2020**.

LUMP SUM PAYMENT FOR TRAFFIC CONTROL:

The Contractor shall maintain traffic on UNIVERSITY DRIVE during construction and shall provide, install and maintain all traffic control devices as shown in the *Roadway Standard Drawings* or as directed by the Engineer.

The lump sum price bid for traffic control shall include but not be limited to **Signs (portable, stationary, or barricade), which includes detour signing, Truck Mounted Attenuators (TMA), Changeable Message Signs (CMS), Flashing Arrow Boards (FAB), Pilot Vehicle, Flaggers, Cones, Skinny Drums and Drums** and all labor, tools, equipment and incidentals necessary to furnish, install, maintain and remove traffic control devices when no longer required.

STABILIZATION REQUIREMENTS:

Stabilization for this project shall comply with the time frame guidelines as specified by the NCG-010000 general construction permit effective August 3, 2011 issued by the North Carolina Department of Environment and Natural Resources Division of Water Quality. Temporary or permanent ground cover stabilization shall occur within 7 calendar days from the last land-disturbing activity, with the following exceptions in which temporary or permanent ground cover shall be provided in 14 calendar days from the last land-disturbing activity:

- Slopes between 2:1 and 3:1, with a slope length of 10 ft. or less
- Slopes 3:1 or flatter, with a slope of length of 50 ft. or less
- Slopes 4:1 or flatter

The stabilization timeframe for High Quality Water (HQW) Zones shall be 7 calendar days with no exceptions for slope grades or lengths. High Quality Water Zones (HQW) Zones are defined by North Carolina Administrative Code 15A NCAC 04A.0105 (25). Temporary and permanent ground cover stabilization shall be achieved in accordance with the provisions in this contract and as directed.

SEEDING AND MULCHING:

(East Crimp)

The kinds of seed and fertilizer, and the rates of application of seed, fertilizer, and limestone, shall be as stated below. During periods of overlapping dates, the kind of seed to be used shall be determined. All rates are in pounds per acre.

All Roadway Areas

March 1 - August 31		September 1 - February 28	
50#	Tall Fescue	50#	Tall Fescue
10#	Centipede	10#	Centipede
25#	Bermudagrass (hulled)	35#	Bermudagrass (unhulled)
500#	Fertilizer	500#	Fertilizer
4000#	Limestone	4000#	Limestone

Waste and Borrow Locations

March 1 – August 31		September 1 - February 28	
75#	Tall Fescue	75#	Tall Fescue
25#	Bermudagrass (hulled)	35#	Bermudagrass (unhulled)
500#	Fertilizer	500#	Fertilizer
4000#	Limestone	4000#	Limestone

Note: 50# of Bahiagrass may be substituted for either Centipede or Bermudagrass only upon Engineer’s request.

Approved Tall Fescue Cultivars

06 Dust	Escalade	Justice	Scorpion
2 nd Millennium	Essential	Kalahari	Serengeti
3 rd Millennium	Evergreen 2		Shelby
Apache III	Falcon IV	Kitty Hawk 2000	Sheridan
Avenger	Falcon NG	Legitimate	Signia
Barlexas	Falcon V	Lexington	Silver Hawk
Barlexas II	Faith	LSD	Sliverstar
Bar Fa	Fat Cat	Magellan	Shenandoah Elite
Barrera	Festnova	Matador	Sidewinder
Barrington	Fidelity	Millennium SRP	Skyline
Barrobusto	Finelawn Elite	Monet	Solara
Barvado	Finelawn Xpress	Mustang 4	Southern Choice II
Biltmore	Finesse II	Ninja 2	Speedway

Bingo	Firebird	Ol' Glory	Spyder LS
Bizem	Firecracker LS	Olympic Gold	Sunset Gold
Blackwatch	Firenza	Padre	Taccoa
Blade Runner II	Five Point	Patagonia	Tanzania
Bonsai	Focus	Pedigree	Trio
Braveheart	Forte	Picasso	Tahoe II
Bravo	Garrison	Piedmont	Talladega
Bullseye	Gazelle II	Plantation	Tarheel
Cannavaro	Gold Medallion	Proseeds 5301	Terrano
Catalyst	Grande 3	Prospect	Titan ltd
Cayenne	Greenbrooks	Pure Gold	Titanium LS
Cessane Rz	Greenkeeper	Quest	Tracer
Chipper	Gremlin	Raptor II	Traverse SRP
Cochise IV	Greystone	Rebel Exeda	Tulsa Time
Constitution	Guardian 21	Rebel Sentry	Turbo
Corgi	Guardian 41	Rebel IV	Turbo RZ
Corona	Hemi	Regiment II	Tuxedo RZ
Coyote	Honky Tonk	Regenerate	Ultimate
Darlington	Hot Rod	Rendition	Venture
Davinci	Hunter	Rhambler 2 SRP	Umbrella
Desire	Inferno	Rembrandt	Van Gogh
Dominion	Innovator	Reunion	Watchdog
Dynamic	Integrity	Riverside	Wolfpack II
Dynasty	Jaguar 3	RNP	Xtremegreen
Endeavor	Jamboree	Rocket	

On cut and fill slopes 2:1 or steeper Centipede shall be applied at the rate of 5 pounds per acre and add 20# of Sericea Lespedeza from January 1 - December 31.

Fertilizer shall be 10-20-20 analysis. A different analysis of fertilizer may be used provided the 1-2-2 ratio is maintained and the rate of application adjusted to provide the same amount of plant food as a 10-20-20 analysis and as directed.

All areas seeded and mulched shall be tacked with asphalt. Crimping of straw in lieu of asphalt tack shall not be allowed on this project.

CRIMPING STRAW MULCH:

Crimping shall be required on this project adjacent to any section of roadway where traffic is to be maintained or allowed during construction. In areas within six feet of the edge of pavement, straw is to be applied and then crimped. After the crimping operation is complete, an additional application of straw shall be applied and immediately tacked with a sufficient amount of undiluted emulsified asphalt.

Straw mulch shall be of sufficient length and quality to withstand the crimping operation.

Crimping equipment including power source shall be subject to the approval of the Engineer providing that maximum spacing of crimper blades shall not exceed 8".

STANDARD SPECIAL PROVISION
NCDOT GENERAL SEED SPECIFICATION FOR SEED QUALITY

Seed shall be sampled and tested by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory. When said samples are collected, the vendor shall supply an independent laboratory report for each lot to be tested. Results from seed so sampled shall be final. Seed not meeting the specifications shall be rejected by the Department of Transportation and shall not be delivered to North Carolina Department of Transportation warehouses. If seed has been delivered it shall be available for pickup and replacement at the supplier's expense.

Any re-labeling required by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory, that would cause the label to reflect as otherwise specified herein shall be rejected by the North Carolina Department of Transportation.

Seed shall be free from seeds of the noxious weeds Johnsongrass, Balloonvine, Jimsonweed, Witchweed, Itchgrass, Serrated Tussock, Showy Crotalaria, Smooth Crotalaria, Sicklepod, Sandbur, Wild Onion, and Wild Garlic. Seed shall not be labeled with the above weed species on the seed analysis label. Tolerances as applied by the Association of Official Seed Analysts will NOT be allowed for the above noxious weeds except for Wild Onion and Wild Garlic.

Tolerances established by the Association of Official Seed Analysts will generally be recognized. However, for the purpose of figuring pure live seed, the found pure seed and found germination percentages as reported by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory will be used. Allowances, as established by the NCDOT, will be recognized for minimum pure live seed as listed on the following pages.

The specifications for restricted noxious weed seed refers to the number per pound as follows:

<u>Restricted Noxious Weed</u>	<u>Limitations per Lb. Of Seed</u>	<u>Restricted Noxious Weed</u>	<u>Limitations per Lb. of Seed</u>
Blessed Thistle	4 seeds	Cornflower (Ragged Robin)	27 seeds
Cocklebur	4 seeds	Texas Panicum	27 seeds
Spurred Anoda	4 seeds	Bracted Plantain	54 seeds
Velvetleaf	4 seeds	Buckhorn Plantain	54 seeds
Morning-glory	8 seeds	Broadleaf Dock	54 seeds
Corn Cockle	10 seeds	Curly Dock	54 seeds
Wild Radish	12 seeds	Dodder	54 seeds
Purple Nutsedge	27 seeds	Giant Foxtail	54 seeds
Yellow Nutsedge	27 seeds	Horsenettle	54 seeds
Canada Thistle	27 seeds	Quackgrass	54 seeds
Field Bindweed	27 seeds	Wild Mustard	54 seeds
Hedge Bindweed	27 seeds		

Seed of Pensacola Bahiagrass shall not contain more than 7% inert matter, Kentucky Bluegrass, Centipede and Fine or Hard Fescue shall not contain more than 5% inert matter whereas

a maximum of 2% inert matter will be allowed on all other kinds of seed. In addition, all seed shall not contain more than 2% other crop seed nor more than 1% total weed seed. The germination rate as tested by the North Carolina Department of Agriculture shall not fall below 70%, which includes both dormant and hard seed. Seed shall be labeled with not more than 7%, 5% or 2% inert matter (according to above specifications), 2% other crop seed and 1% total weed seed.

Exceptions may be made for minimum pure live seed allowances when cases of seed variety shortages are verified. Pure live seed percentages will be applied in a verified shortage situation. Those purchase orders of deficient seed lots will be credited with the percentage that the seed is deficient.

FURTHER SPECIFICATIONS FOR EACH SEED GROUP ARE GIVEN BELOW:

Minimum 85% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 83% pure live seed will not be approved.

Sericea Lespedeza
Oats (seeds)

Minimum 80% pure live seed; maximum 1% total weed seed; maximum 2% total other crop; maximum 144 restricted noxious weed seed per pound. Seed less than 78% pure live seed will not be approved.

Tall Fescue (all approved varieties)	Bermudagrass
Kobe Lespedeza	Browntop Millet
Korean Lespedeza	German Millet – Strain R
Weeping Lovegrass	Clover – Red/White/Crimson
Carpetgrass	

Minimum 78% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 76% pure live seed will not be approved.

Common or Sweet Sundangrass

Minimum 76% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 74% pure live seed will not be approved.

Rye (grain; all varieties)
Kentucky Bluegrass (all approved varieties)
Hard Fescue (all approved varieties)
Shrub (bicolor) Lespedeza

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 noxious weed seed per pound. Seed less than 70% pure live seed will not be approved.

Centipedegrass
Crownvetch
Pensacola Bahiagrass
Creeping Red Fescue

Japanese Millet
Reed Canary Grass
Zoysia

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 5% inert matter; maximum 144 restricted noxious weed seed per pound.

Barnyard Grass
Big Bluestem
Little Bluestem
Bristly Locust
Birdsfoot Trefoil
Indiangrass
Orchardgrass
Switchgrass
Yellow Blossom Sweet Clover

EROSION CONTROL SPECIAL PROVISIONS

PLEASE NOTE: The following item (Silt Fence Outlet) is not a pay item; however, the listed materials and construction methods are to be used where "silt fence outlets" are specified on the plans. This is to be considered incidental to the temporary silt fence installation.

SPECIAL SEDIMENT CONTROL FENCE (SILT FENCE OUTLET)

DESCRIPTION

Furnish materials, construct, maintain and remove special sediment control fence. Place special sediment control fence as shown in the plans or as directed.

MATERIALS

Refer to Division 10.

Item	Section
Sediment Control Stone, Standard Size No. 5 or 57	1005

(A) Posts

Provide steel posts in accordance with Subarticle 1605-2(A).

(B) 1/4" Hardware Cloth

Provide hardware cloth with 1/4" openings constructed from 24 gauge wire.

(C) Attachment Device

Provide No. 9 staple with at least 1 1/2" length or other approved attachment device.

CONSTRUCTION METHODS

Install hardware cloth and sediment control stone in accordance with *Roadway Standard Drawings* No. 1606.01. Attach hardware cloth to post with wire staple or other acceptable methods.

Maintain the special sediment control fence until the project is accepted or until the fence is removed. Remove and dispose of silt accumulations at the fence when so directed in accordance with Section 1630.

CURB INLET SILT INTERCEPTOR:

Install and maintain a curb inlet silt interceptor at the locations noted on the plans. The purpose of the curb inlet silt interceptor is to keep silt, sediment and construction debris out of the storm water system. The curb inlet silt interceptor shall be comprised of two attached components: a sewn geotextile fabric unit enclosing a porous structure in the form of a cylindrical tube placed in front of and extending beyond the inlet opening on both sides; and, a sewn geotextile fabric sack designed to fit the opening of the catch basin or drop inlet and which hangs underneath the grate.

The curb inlet silt interceptor shall have lifting straps to allow removal of the unit and manual inspection of the storm water system.

The curb inlet silt interceptor shall utilize a sewn geotextile with the following minimum characteristics:

PROPERTY	TEST METHOD	UNITS	TEST RESULTS
Grab Tensile Strength	ASTM D 4632	lbs	450 x 300
Grab Tensile	ASTM D 4632	%	40 x 25
Puncture Strength	ASTM D 4833	lbs	130
Mullen Burst Strength	ASTM D 3786	psi	600
Trapezoid Tear	ASTM D 4533	lbs	165 x 150
% Open Area (POA)	COE - 22125-86	%	28
Apparent Opening Size (US Standard Sieve)	ASTM D 4751		30
Permittivity	ASTM D 4491	sec ⁻¹	3.5
Permeability	ASTM 4491	cm/sec	0.25
Water Flow Rate	ASTM 4491	gal/min/ft ²	250
Ultraviolet Resistance	ASTM D 4355	%	70

Provide one (1) set of shop drawings and test data to Project Manager for approval.

Payment will be made under:

Pay Item
Curb Inlet Silt Interceptor

Pay Unit
Each

ROCK INLET SEDIMENT TRAP TYPE C:

DESCRIPTION

Construct, maintain and remove devices around catch basins and/or drop inlets to reduce water velocity and contain sediment. Work includes furnishing all fence posts, hardware cloth, hardware, stone and other materials, installing and maintaining the 1/4 inch hardware cloth.

The actual conditions which occur during the construction of the project will determine the quantity of rock inlet sediment traps constructed. The quantity of inlet sediment traps may be increased, decreased or eliminated entirely as directed. Such variations in quantity will not be considered as alterations in the details of construction or a change in the character of the work.

MATERIALS

Refer to Division 10.

Item	Section
Sediment Control Stone, Standard Size No. 5 or 57	1005
Stone for Erosion Control, Class A or Class B	1042

(A) Steel Posts

Provide steel posts in accordance with Subarticle 1605-2(A).

(B) Attachment Devices

Provide plastic ties, wire fasteners or other approved attachment device.

(C) 1/4" Hardware Cloth

Provide hardware cloth with 1/4 inch openings constructed from 24 gauge wire and with at least 48 inches width as specified in ASTM A740.

CONSTRUCTION METHODS

(A) Type A

Place structural stone, Class B, around the outside perimeter of the inlet structure with approximately 2:1 side slopes and plate the upstream side with sediment control stone.

(B) Type B

Place structural stone, Class A, around the outside perimeter of the inlet structure with approximately 2:1 side slopes and plate the upstream side with sediment control stone.

(C) Type C

Construct rock inlet sediment trap Type C devices as shown in the plans and at other locations as directed. Attach hardware cloth to posts with wire staple or other acceptable methods.

MAINTENANCE AND REMOVAL

Maintain the rock inlet sediment trap, remove and dispose of silt accumulations at the inlet sediment traps when necessary or as directed in accordance with Section 1630.

Remove rock inlet sediment traps as the project nears completion, or as directed. Dress the area to blend with existing contours, seed and mulch the area in accordance with Section 1660.

MEASUREMENT AND PAYMENT

Payment will be made under:

Pay Item	Pay Unit
Rock Inlet Sediment Trap Type C	Each

SIGNALS AND INTELLIGENT TRANSPORTATION SYSTEMS
PROJECT SPECIAL PROVISIONS

ADJUSTMENT OF SIGNAL JUNCTION BOXES:

Adjust traffic signal junction boxes as shown on plans per NCDOT 2018 Standard Roadway Drawing 1716.01

Payment will be made under:

Pay Item	Pay Unit
Adjustment of signal junction boxes	Each

APPENDIX A



UNDERUTILIZED BUSINESS ENTERPRISE (UBE) REQUIREMENTS AND CONSTRUCTION FORMS

CONTRACT: ST-286

**UNDERUTILIZED BUSINESS ENTERPRISE
REQUIREMENTS**

CITY OF DURHAM, NC

PROJECT GOAL SHEET FOR

CONTRACT ST-286 PETITION STREETS 2021

GENERAL CONSTRUCTION

<u>MUBE</u>	<u>WUBE</u>
<u>11 %</u>	<u>7 %</u>

Per Section 26-8. (a) of the Ordinance to Promote Equal Business Opportunities in City Contracting: “UBE’s that are owned by SED persons who are not Blacks or women may be counted by the Bidder towards either UBE goal.”

MUBE	Underutilized Business Enterprise owned by Blacks
WUBE	Underutilized Business Enterprise owned by women
UBE	Underutilized Business Enterprise

E&I CONSTRUCTION PROJECT MANUAL STATEMENT

It is the policy of the City to provide equal opportunities for City contracting to underutilized businesses owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination. This policy applies to construction contracting. The City's Department of Equal Opportunity / Equity Assurance Department has reviewed this proposed project and established Underutilized Business Enterprise (UBE) participation goals: Minority Business Enterprise (MUBE)-0% and Woman Business Enterprise (WUBE)-7%. A listing of firms from the HUB database is included in this project manual. Bidders may also use firms currently certified as MUBES and WUBES by N.C. D.O.T. and the SBA 8(a) Program to meet the participation requirements.

The bids will be evaluated and the contract awarded in accordance with statutory public contract requirements and as supplemented by the City of Durham's Equal Business Opportunity Program Construction Forms included with this bid. **The following forms are mandatory and must be filled out and returned with the bid proposal.**

- A. Bid Forms**
- B. Non-Collusion Affidavit**
- C. Bidder Safety Evaluation Questionnaire**
- D. *** BID BOND IF applicable******
- E. Equal Business Opportunity Program Construction Forms**
 - 1. Forms E-101 UBE Participation On Base Bid and/or E-102 UBE Participation On Bid Alternate
 - 2. Form E-104 Employee Breakdown

Any bids submitted without these completed forms may be deemed as "non-responsive". If there are any questions or problems in filling out the UBE forms, please contact:

City of Durham
Equity & Inclusion Department
(919) 560-4180

EQUAL BUSINESS OPPORTUNITY PROGRAM

CONSTRUCTION FORMS

Updated 08/19



These instructions summarize the provisions of the City of Durham’s Equal Business Opportunity Ordinance as it applies to the bid process. Of course, as with any summary, it cannot reflect all of the ordinance.

QUESTIONS AND ANSWERS ON UBE REQUIREMENTS

1. **What is the purpose of the City’s Equal Business Opportunity (EBOP) program?** The City Manager has set UBE goals for certain contract classifications. There will be a goal for UBEs owned by minorities and a goal for UBEs owned by women. For the bid to be fully considered by the City, the bid needs to meet the established goals or the bidder needs to have made good-faith efforts to subcontract with UBEs in order to meet the goals. In order to be given credit for making those good-faith efforts, the bidder must provide written documentation of those good-faith efforts. That written documentation must be submitted to the City within 2 days after the bid opening unless a different time is stated by the City. See the instructions below regarding Form E-107.

2. **What is an “UBE”?** It means an Underutilized Business Enterprise. An UBE is a business, certified by the N. C. Department of Administration HUB Office, N.C. Department of Transportation or the U.S. Small Business Administration Section 8(a) Business Development Program as a minority or women business enterprise. The qualifying UBE needs to have its certification from one of the above named entities before the bid opening if it is to count toward meeting the goals. Failure to provide evidence of UBE status may disqualify the firm’s participation for the purpose of meeting UBE goals

For purposes of this document and associated forms, any reference to an “UBE,” or similar reference shall include reference to a qualified women or minority owned firm certified and approved in accordance with the above paragraphs.

3. **What UBE forms must a bidder or contractor turn in to the City, and when?**

<i>Name or description of form</i>	<i>Necessary to submit this form?</i>	<i>When to submit it?</i>
E-101 (UBE PARTICIPATION ON BASE BID)	Always	With the bid
E-102 (UBE PARTICIPATION ON BID ALTERNATE)	Yes, if there are alternates. Use a separate form for each alternate.	With the bid
E-103 reserved for future use)	n/a	n/a
E-104 (EMPLOYEE BREAKDOWN)	Yes, or a EEO-1 form if large enough to report employment statistics to the federal government.	With the bid

UBE forms continued

E-105 (STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR)	Yes, if the bidder proposes to count any subcontracts with UBEs towards the UBE goals	Within 5 days after bid opening unless a different time is stated by the City.
E-106 (REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING)	Yes, if the bidder or contractor proposes certain changes in its subcontracting	Not with the bid. Once the bidder is identified as the apparent lowest responsible bidder, this form is due before the bidder/contractor can make the proposed change.
E-107 (QUESTIONNAIRE ON BIDDER'S GOOD-FAITH EFFORTS)	Yes, if the bidder fails to meet the UBE goals. Do not turn in if the bidder met the goals.	Within 2 days after bid opening unless a different time is stated by the City
Good-faith documentation	Yes, if the bidder failed to meet the UBE goals.	Within 2 days after bid opening unless a different time is stated by the City

4. **If a bidder fails to meet the UBE goals, can it still be awarded the contract?** Bidders that do not meet the goals but demonstrate good-faith efforts are treated equally to those that meet the goals. Awarding a contract is ultimately the decision of the City Council, which considers compliance with the EBO ordinance along with other matters.
5. **In making good-faith efforts, what UBEs should a potential bidder contact?** The City provides a list of UBEs that have been certified by the N. C. Department of Administration HUB Office, as a minority or women business enterprise for particular trades, services, goods, etc. Potential bidders should contact UBEs listed for the work that can be subcontracted.
6. **Our firm already has employees who can do the work and does not want to subcontract that work. How does this fit in?** The purpose of the EBO ordinance is to change business practices that would otherwise occur, by giving opportunities to under-used segments of the economy. If the bidder does not meet the goals, its good-faith efforts will be examined as with any other bidder that did not meet the goals.
7. **If the bidder contacts an underutilized business enterprise owned by a minority or woman that could become a UBE, will that count toward good-faith efforts?** This contact will not count unless the firm that you contact is certified by the N. C. Department of Administration HUB Office, N.C. Department of Transportation or the U.S. Small Business Administration Section (a) Business Development Program as a minority or women business enterprise before the bids are opened. In making good-faith efforts, let us suppose that a potential bidder contacts firms that could qualify to be UBEs. If those firms have their certification from the previously identified authorities at the time of the bid opening, those contacts will count towards good-faith efforts. But there is a risk, because getting certification takes time.
8. **Do all subcontracts with UBEs count?** The City will count as UBE participation only expenditures to an UBE that performs a commercially-useful function in the relevant work. An UBE performs such a function when the minority or women business owners themselves are actually involved in performing, managing, and supervising a distinct element of the work. To determine whether those requirements are met, the City takes into account the amount of work subcontracted, industry practices, the adequacy of the resources of the UBE for the work, the qualifications, such as possession of licenses, permits, and professional designations of the minority and women owners, and other relevant factors. For example, if an UBE lacks substantially all of the resources equipment and personnel to do the work it shall be presumed not to perform a commercially-useful function. The EBO ordinance includes more points to consider on this issue.
9. **May an UBE enter into subcontracts?** This question arises in two situations: (1) the bidder is an UBE and (2) the bidder is subcontracting with an UBE. Consistent with normal industry practices, an UBE may enter into subcontracts. If an UBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the UBE shall be presumed not to be performing a commercially-useful function. The UBE may present evidence to rebut this presumption to the City.
10. **What does it mean to say that information must be submitted “with the bid”?** Unless bidders are given other written instructions from the City, it means that the information must be in a sealed envelope, delivered to the same place where a bid can be delivered, and before the time set for the bid opening. Unless bidders are given other written instructions from the City, the information can be either in the same envelope as the bid or in a separate envelope. If it is a separate envelope, the outside of the envelope must state the same information that is required on the bid envelope, and that it contains UBE forms.

11. When the chart in question 3 says that a form can be submitted 2 days or 5 days after the bid opening, exactly when is it due? Where is it to be submitted?

The form must be submitted to the City's Equity & Inclusion Department, located at 101 City Hall Annex or faxed/emailed to (919) 560-4513, so that it is received within 2 days or 5 days (whichever applies according to the chart) after the bid opening. If the form is faxed/emailed, it must be received before midnight on that 2nd or 5th day. If it is delivered by any other means, it must be received before 5:00 PM. In counting these 2 days or 5 days, exclude the following: the day of the bid opening, Saturday, Sunday, and holidays observed by city government of the City of Durham. For instance, for a form due in 2 days, if the bid opening is on a Thursday, the due date for the form would be on the following Monday (midnight if faxed, otherwise 5:00 PM). If the day after the bid opening or that Monday is a City holiday, the form would be due on Tuesday. For a form due in 5 days, if the bid opening were on Tuesday, the due date for the form would be on the following Tuesday (midnight if faxed, otherwise 5:00 PM). If any weekday between those Tuesdays is a City holiday or if the Tuesday on which the form would be due is a City holiday, the form would be due on Wednesday. It is best to place the documents inside an envelope, and to write on the outside of the envelope the same information that is required on the bid envelope, and that it contains UBE forms. Holidays observed by city government are New Years' Day, Dr. Martin Luther King, Jr., Day; Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day; two days (varying from year to year) during the week of Christmas Day; and other times as may be authorized by City Council.

12. When there are bid alternates how is UBE participation counted? The total amount of the award actually made by the City is the key. For instance, assume the following made-up example:

- Base bid is \$200,000
- Alternate A bid is \$50,000
- Alternate B bid is \$22,000
- Minority-owned UBE goal is 11%.
- The bidder proposes Minority-owned UBE participation as follows: \$22,000 on the base bid, \$4,000 on Alternate A, and \$10,000 on Alternate B.

In this fictional example, the bidder may or may not meet the goal, depending on the actual award by Council. This chart illustrates:

AWARD BY CITY COUNCIL

	Only the base bid	Base bid + Alternate A	Base bid + Alternate B	Base bid + Alternates A & B
Bid total	\$200,000	\$250,000 (200,000 + 50,000)	\$220,000 (200,000 + 20,000)	\$270,000 (200,000 + 70,000)
Total UBE participation	\$22,000	\$26,000 (22,000 + 4,000)	\$32,000 (22,000 + 10,000)	\$36,000 (22,000 + 14,000)
Minority-owned UBE percentage	11%	10.4%	14.5%	13.3%
Meet 11% Minority-owned UBE goal?	Yes	No	Yes	Yes

14. How is the lease of equipment by an UBE counted? If the UBE leases equipment for the work of the contract, the value of the lease payments is included as part of the UBE's participation. However, it is not proper to include such lease payments if they are to be made to the prime contractor or the prime contractor's "Affiliate." To understand what an "Affiliate" is, see section 26-3 of the EBO ordinance.

15. How is the purchase of goods from an UBE counted? If the bidder is buying goods from an UBE, the cost of the goods can be considered UBE participation only if (a) the UBE operates or maintains a factory that produces the goods, or (b) the UBE has an establishment where the goods of the general character described by the specifications or required under the Contract are regularly sold or leased to the public in the usual course of business. If (b) applies, the UBE's *principal* business must be selling or leasing those goods and the UBE must operate under its own name

INSTRUCTIONS FOR INDIVIDUAL UBE BID FORMS FOR CONSTRUCTION

Form E-101 (UBE PARTICIPATION) On this form, "participation" is the dollar amount of subcontracts for significant goods and services to be used to perform the contract. For instance, if the bidder would enter into subcontract with UBEs for a total of \$30,000, that would be the UBE participation amount. The sum of UBE participation and non-UBE participation should equal the amount of the bid. Form E-101 is required for the base bid

Form E-102 (UBE PARTICIPATION ON BID ALTERNATE) This form is essentially the same as Form E-101, except that it is used for the alternate bids instead of the base bid. Use a separate Form E-102 for each alternate bid.

Form E-103 reserved for future use

Form E-104 (EMPLOYEE BREAKDOWN) Complete Part A for the primary location where the goods and services that are the subject of the bid are to be made or provided. If the parent company or other locations of the bidder are providing any substantial portion of the goods or services, then the bidder must also complete Part B, for the consolidated company. If the bidder has an EEO-1 Report that provides the same information as required on the Form E-104, the EEO-1 Report may be used instead. On whether to submit Form E-104, see question 3 above. See questions 3 and 11 above on when and where to turn in this form.

Form E-105 (STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR) The bidder must provide a Form E-105 (Statement of Intent) for each UBE firm that the bidder would subcontract with if the City awards the contract to the bidder. See questions 3 and 11 above on when and where to turn in this form.

On Form E-105, what happens if column 2 (dollar amount) disagrees with column 3 (percentage)? If there is a conflict between the dollar amount in Column 2 and the percentage of base bid in Column 3, the percentage stated in Column 3 will control. For instance, if Column 2 is \$10,000, Column 3 is 10%, and the base bid is \$200,000, there is an error, because ten percent of \$200,000 is \$20,000, not \$10,000. In that example, the form will be read as a commitment for \$20,000. If the UBE both (i) is doubtful of its arithmetic and (ii) wants Column 2 to control in case of disagreement, it may say that Column 2 will control over Column 3, but to do so, it must write that on Form E-105.

E-106 (REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING) When is this form used? Beginning with the time that the City Manager identifies a bidder as the apparent lowest responsible bidder and continuing as that bidder is awarded the contract and continuing until that bidder/contractor reaches the point of final completion of the work, Form E-106 is to be used when the following occurs: If the bidder/contractor proposes to do any of the following;

- to replace a subcontractor,
- to perform subcontracted work with the bidder/contractor's own forces, to
- increase the quantity of subcontracted work,
- to decrease the quantity of subcontracted work, or
- to change the allocation of work among subcontractors,

then the bidder/contractor must make good-faith efforts to attain the goals that it has shown on the E-101 and applicable E-102 forms, and the bidder/contractor must fill out Form E-106. Substitutions of subcontractors in these circumstances, both before and after the awarding of a contract, are subject to City approval. Consult the City's Equity & Inclusion Department on the procedures to follow in order to comply with City Code 26- 10(c).

E-106 (QUESTIONNAIRE ON BIDDER'S GOOD-FAITH EFFORTS) Bidders that do not attain the UBE goals have the responsibility to make good-faith efforts and to demonstrate to the City that they have made such efforts. In determining a bidder's good-faith efforts to engage UBEs, the City Manager shall consider the information supplied by the bidder to answer the questions in Form E-107, along with other criteria that the City Manager deems proper. Form E-107 is an optional tool that bidders may use to show that they have made good-faith efforts. See questions 3 and 11 above on when and where to turn in this form. Even when this form may be submitted after the bid opening, it cannot include information on efforts made after the bid opening. Even if a bidder does not use Form E-107, the City will nevertheless attempt to answer the questions on the E-107 using good-faith documentation supplied by the bidder. Bidders who do not turn in Form E-107 will still find it helpful to know how the City will determine whether good-faith efforts have been made.

For Section 2 of Form E-107 -- To make the best good-faith efforts as described under Section 2 on E-107, your firm should have sent a written letter, email, phone call or fax to all UBEs on the City's list that perform the kind of work to be subcontracted. Your firm needs to keep a record of all of these attempts to reach UBEs. That letter would say, in effect, as follows: (Of course, your firm would need to write appropriate words where *italicized instructions* are used below.)

Our firm is interested in bidding on a contract with the City of Durham for [*describe the project*]. We are interested in subcontracting, to your firm, the following work [*describe specific work, for example, painting of interiors of 5 rooms, including prep work; or supplying 20 circuit breakers of type XJE-R or equivalent*]. You may inspect the applicable plans and specifications and descriptions of items to be purchased at our office located at the address shown above, or at the City of Durham's Equity & Inclusion Department, 101 City Hall Plaza Annex, Durham, N.C., 27701, 919-560- 4180[, or at the AGC plan room in (*specify the locations*)]. You may obtain a copy [*explain how and from whom (the City, architect, engineer, etc.) the potential subs can obtain a copy*].

If applicable, tell the UBEs at which offices of the AGC the plans and specifications may be seen, possibly from the following AGC list.

1100 Euclid Avenue Charlotte, NC 28203-1868 Phone: (704)372-1450	Caswell Bldg., Glenwood Place 3700 National Drive, Ste. 201 Raleigh, NC 27612 Phone: (919)781-3270
2713 Breezewood Avenue Fayetteville, NC 28303 Phone: (910)484-0184	2527 S. 17th St. Wilmington, NC 28401 (McGee CADD Reprographics Bldg.) Phone: (910)791-5533
Other AGC locations if they have the plans and specifications	

GOOD-FAITH DOCUMENTATION. This is not a City form but is documentation to be supplied by the bidder. See the instructions on Form E-107 above. Unless the bidder meets the UBE goals, the bidder must demonstrate that it made good-faith efforts. To do so, it can use a combination of providing answers to Form E-107 and documentation, such as copies of the notices to UBEs that are described in question 1(c) on Form E-107. See questions 3 and 11 above on when and where to turn in this form. Even when this documentation may be submitted after the bid opening, it cannot include information on efforts made after the bid opening.

Form E-101 UBE PARTICIPATION ON BASE BID

Name of Bidder: _____

Total dollar amount of UBE participation in base bid work: _____

or each row, check one column: E or F

Column A	Column B	Column C	Column D	Column E	Column F
Name of proposed subcontractor for base bid work	Goods and services to be provided for base bid work	Subcontract amount, in dollars, for base bid work	Percentage of total base bid (Column C divided by total base bid)	Minority-owned UBE	Women-owned UBE
		\$	%		
		\$	%		
		\$	%		
		\$	%		

Attach extra sheets as needed.

Do the above participation amounts meet the goals on this contract, assuming only the base bid is counted?

Yes **No.** If the answer is No: (1) the bidder must have made good-faith efforts; (2) the bidder must provide, within 2 business days after bid opening, documentation of good-faith efforts; and (3) the bidder must sign below.

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and the Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this E-101 and on all applicable E-102 forms, to perform the work for the dollar amounts or percentages described on this E-101 and applicable E-102s.

Signature of Individual authorized to sign for Bidder

Form E-102 UBE PARTICIPATION ON BID ALTERNATE

This form pertains to the following bid alternate: _____

(Specify the alternate, in the way that it is designated in the bid documents)

Name of Bidder: _____

Total dollar amount of UBE participation in work on this alternate: _____

For each row, check one column: E or F

Column A	Column B	Column C	Column D	Column E	Column F
Name of proposed subcontractor for this alternate	Goods and services to be provided for this alternate	Subcontract amount, in dollars, for this alternate	Percentage of total bid for this alternate (Column C divided by total bid for this alternate)	Minority-owned UBE	Women-owned UBE
		\$	%		
		\$	%		
		\$	%		
		\$	%		

Attach extra sheets as needed.

Form E-104 EMPLOYEE BREAKDOWN
Part A – Employee statistics for the primary location

Employment category	Total Employees	Total males	Total females	M— a — l — e — s					F — e — m — a — l — e — s				
				White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

Part B – Employee statistics for the consolidated company. (See instructions for this form on whether this part is required.)

Employment category	Total Employees	Total males	Total females	M— a — l — e — s					F — e — m — a — l — e — s				
				White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

It is in the City’s interest to collect accurate data on the makeup of the business owners that contract with the City. Your response to the follow questions is optional, although the City would appreciate your response:

Are you (the business owner for this bid/proposal) certified as a minority or woman firm with the N.C. HUB Office, N.C. Dept. of Transportation or Small Business Administration 8(a) Program? Yes _____ No _____

If NOT, please put an X beside any of the following with which more than 50% of the ownership identifies: _____White/Non-Hispanic _____Black _____Hispanic _____Asian _____American Indian _____Woman

I certify that the information provided is true and correct at this time.

_____ Date

_____ Authorized Signature/ Name of Firm

Form E-105 STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR

Name of Bidder: _____

Name of Project: _____

The undersigned firm meets the City of Durham's criteria as a UBE.

The undersigned UBE represents that it will enter into a formal contract with the Bidder to perform the following work in connection with the Project, in the dollar amount or percentage listed below, if the Bidder signs a contract with the City of Durham for the Project.

Describe the work in sufficient detail so that it can be determined whether the UBE's work is a substantial and necessary part of the Project.

Column 1 - description of work to be done by undersigned UBE	Column 2 -dollar amount of the proposed subcontract between the bidder and the undersigned UBE	Column 3 - percentage of Bidder's base bid represented by the proposed subcontract between the Bidder and the undersigned UBE

The undersigned -UBE will be ready to begin work on the subcontract on the following date:

Name of UBE: _____ Telephone No. _____ Fax No. _____

Address: _____

Zip Code: _____

Signature of authorized representative of UBE

Title of the person who signed above: _____

What persons with the UBE should the City contact with questions about this form or the proposed subcontract? _____

Name of individual: _____ Telephone No. _____

Title of Individual: _____

Email address: _____

By submitting this form to the City of Durham, the Bidder represents that if the Bidder signs the contract with the City of Durham for the Project, the Bidder will enter into the subcontract described above with this UBE.

Form E-106 REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING

Project: _____

Name of bidder or contractor: _____

Name and title of representative of bidder or contractor: _____

Address : _____ Zip Code: _____

Telephone No.: _____ Fax Number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (check one) **increases** **decreases** the dollar amount of the bidder's/contractor's contract with the City.

Does the proposed change decrease the UBE participation? (check one) **yes** **no**

If the answer is **yes**, complete the following:

This form is used only if the conditions described in the instructions are present.

BOX A

For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of subcontractor: _____

Goods and services to be provided before the proposed change: _____

Is it proposed to eliminate this subcontract? yes no

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in concrete work and deleting \$7,000 in grading*): _____

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subcontractor is (check one):

- 1. Minority-owned UBE
- 2. Women-Owned UBE
- 3. Not a UBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above (continued)

Name of sub-contractor for the new work:

Goods and Services to be provided by this proposed subcontractor:

Dollar amount proposed of this proposed subcontract: This sub-contractor is:

- 1. Minority-owned UBE
- 2. Women-Owned UBE
- 3. Not a UBE

Add additional sheets as necessary.

This form is used only if the conditions described in the instructions are present.

Form E-107 QUESTIONNAIRE ON BIDDER'S GOOD-FAITHEFFORTS

Name of Bidder: _____

*If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your Firm attaching to this questionnaire?** _____ (Don't count the 2 pages of this questionnaire.)*

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING UBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs (that is, in the list provided by the City) in the scopes of work of the contract? **yes** **no**

(b) In such soliciting, did your firm advertise? **yes** **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? **yes** **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? **yes** **no**

(d) Did your firm attend the pre-bid conference? **yes** **no**

(e) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? **yes** **no**

(f) Did your firm follow up with UBEs that showed interest? **yes** **no**

(g) With reference to the UBEs that your firm notified of the type of work to be subcontracted -- Did your firm tell them?

- (i) the specific work your firm was considering for subcontracting? **yes** **no**
- (ii) that their interest in the contract is being solicited? **yes** **no**
- (iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? **yes** **no**

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? **yes** **no**

(b) If **yes**, please describe the portions selected. **ANSWER:**

3. NEGOTIATION. In your answers to 3, you may omit information regarding UBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of UBEs that you contacted? **ANSWER:**

(b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be specific. **ANSWER:**

4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? **yes** **no** (Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? **yes** **no** If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? **yes** **no** If **yes**, describe. **ANSWER:**

5. GOODS AND SERVICES. What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit UBEs for the work? **yes** **no**
Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? **yes** **no**
Please explain. **ANSWER:**

APPENDIX B



CERTIFIED UNDERUTILIZED BUSINESS ENTERPRISE (UBE) LISTING

CONTRACT: ST-286

2019 Petition Streets

Company Name	Contact Name	Address	City, State	Zip	County	Phone	Fax	Email	Hub Certification	Construction Codes In Search Criteria	Construction License/Limitation
A & D Enterprises, Inc.	Hodges, Angela	2975 Morningside Road	Winston-Salem, NC	27107	DAVIDSON	336-537-4113		ahodges@wakehealth.edu	W	02600 Drainage and Containment	General Contractor 68764 Limited; General Trades/Sub Contractor
A & M Ventures, Inc.	Haq, Waheed	PO Box 30801	Raleigh, NC	27622-0801	WAKE	919-510-0223	919-510-0558	waheed557@gmail.com	AA	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	General Contractor 34951 Unlimited
A VOGT CONSTRUCTION	Vogt, Anthony	3819 Raintree Drive	Greensboro, NC	27407	GUILFORD	336-420-8623		anthony.avconstruction@gmail.com	B		
A&K Trade Facility INC.	Stewart, Karessa	2037 Martin Luther King Jr. Drive	Greensboro, NC	27406	GUILFORD	919-519-0813		aktf2017@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02200 Site Preparation	General Trades/Sub Contractor
Abatemaster, Inc.	Tesh, Angela	PO Box 12367	Winston-Salem, NC	27117	FORSYTH	336-731-4396	336-731-4398	angela.abatemaster@yahoo.com	W	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor 62429 Unlimited
Abbott's Excavation Company, Inc.	Renn, Lori	774 Cheatham Mabry Road	Henderson, NC	27536	VANCE	252-767-4949		rennlaw@centurylink.net	W	02100 Site Remediation; 02200 Site Preparation; 02300 Earthwork; 02600 Drainage	General Trades/Sub Contractor
ABTAK OF DURHAM INC	BROWN, ELI	11 LOGGING TRAIL	DURHAM, NC	27707	DURHAM	(919)259-0091		abtakofdurham@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	General Contractor 71930 None; General Trades/Sub Contractor 71930
Active Construction Services LLC	stevens, shante	631 United Drive Suite# 100-B	DURHAM, NC	27713	DURHAM	(919)206-4440	(919)206-4474	shante@activeconstructionllc.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	General Trades/Sub Contractor
AFRI LOGISTICS LLC	NWAKUCHE, AMAECHI	P O BOX 97005	RALEIGH, NC	27624	WAKE	919-637-0354	919-926-0159	afrilogisticsllc@yahoo.com	B		
Aggregate Haulers Inc.	Crews, Marilyn	415 S. Chimney Road	Greensboro, NC	27409	GUILFORD	336-855-3337	336-855-2626	Aggregatehaulersinc@gmail.com	W	01900 Facility Decommissioning (Hauling/Debris Removal)	
Alston Grading & Hauling LLC	Hope-Alston, Jennifer	3206 Lawndale Dr unit J	Greensboro, NC	27407	GUILFORD	336-587-3119		alstongradinghauling@gmail.com	B	02300 Earthwork	
AM Custom Cleaning, LLC	Aguilar, Lorena	3328 Forest Mill Cir	Raleigh, NC	27616	WAKE	919-422-0474		lorena.amcleaning@outlook.com	HA	01900 Facility Decommissioning (Hauling/Debris Removal)	
American Cornerstone Construction, Inc.	Brothers, Lisa	1088 Tommys Lake Rd.	Winston Salem, NC	27105	FORSYTH	336-922-0500	336-922-0500	brothersl@twc.com	W	02200 Site Preparation; 02300 Earthwork	General Trades/Sub Contractor
Arcees Lawn Maintenance and Landscaping	Austin, Elroy	2124 Angier Rd	Fuquay-Varina, NC	27526	WAKE	919-669-2337	919-552-1989	eaustin57@msn.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02900 Planting	General Trades/Sub Contractor
Archie Services LLC	Archie, Brent	5939 West Friendly Ave	Greensboro, NC	27410	GUILFORD	336-987-0895	336-294-1586	info@archieservices.com	B		
Asphalt Services on Demand, Inc.	Daniels, Amber	959 Short Journey Rd.	Smithfield, NC	27577	JOHNSTON	919-631-3733	919-938-0772	amber.d@asdinc.net	W	02100 Site Remediation; 02300 Earthwork; 02600 Drainage	
Atlantic Contracting Co. Inc	Kattan, Niveen	PO BOX 49559	Greensboro, NC	27419	GUILFORD	336-931-3109	336-931-3108	info@atlanticcontractinginc.com	W	02100 Site Remediation; 02200 Site Preparation; 02300 Earthwork; 02600 Drainage	General Contractor 64230 Unlimited; General Trades/Sub Contractor
Atlantic Resources Inc.	Barefoot, Brian	1515 S Bright Leaf Blvd	SMITHFIELD, NC	27577	JOHNSTON	919-938-3201		brian@atlanticresourcesinc.com	W	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	
Aurora Renovations and Developments, LLC	Lopez, Oscar D.	8474 Stafford Mill Rd	Oak Ridge, NC	27310	GUILFORD	336-708-4486		oscar@AuroraNCProperties.com	HA	02100 Site Remediation; 02300 Earthwork; 02600 Drainage	General Contractor None; General Trades/Sub Contractor
B and B Triangle Lawn care	Bond, Andre	P.O. Box 25006	Durham, NC	27702	DURHAM	919-423-1417	919-384-9300	abond@bandbtrianglelawncafe.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	General Trades/Sub Contractor 1842
Batista Grading, Inc.	Batista, Connie	829 Creekside Dr	Clayton, NC	27520	JOHNSTON	919-553-2750	919-553-3059	connie@bgsus.com	HA	02100 Site Remediation; 02200 Site Preparation; 02300 Earthwork; 02600 Drainage	General Contractor 51729 None; General Trades/Sub Contractor 51729
BLG Construction Services, LLC	Gaddis, Bengie	1416 Wal Pat Rd	Smithfield, NC	27577	JOHNSTON	919-820-7806	919-934-0061	bgaddis@jcs.org	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	General Trades/Sub Contractor
Browe Construction Company, Inc.	Brown, Jillane	451 OAK TREE DRIVE	SELMA, NC	27576	JOHNSTON	919-415-1616	919-373-5349	jill.brown@browecon.com	W	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	General Contractor 27543 Unlimited
Bull City Facility Services, I	Shackleford, Tyrone	519 Grist Mill Lane	Durham, NC	27712	DURHAM	919-479-5371		tshackle@hotmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	
C.R.Beaver, Inc.	Beaver, Joy	5655 Regents Park Road	Kernersville, NC	27284	FORSYTH	(336)996-8829	(336)996-0145	joy@crbeaver.com	W	01900 Facility Decommissioning (Hauling/Debris Removal)	
C2 Contractors, LLC	Williams, Ursula	405 Banner Avenue	GREENSBORO, NC	27401	GUILFORD	336-379-8806	336-379-9184	ursula@c2contractorsllc.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor 64914 Unlimited; General Trades/Sub Contractor
CALLIS CONTRACTORS, INC.	Callis, Jesse	1306 Broad Street	Durham, NC	27705-3533	DURHAM	919-416-6191	919-416-1131	proimgang@calliscontractorsinc.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	General Contractor 59167 None; General Trades/Sub Contractor
Canady's Landscape & Erosion Control	Canady, Stefanie	256 Fairview Acres Road	Lexington, NC	27295-8284	DAVIDSON	336-236-1182	336-249-8165	canadyserosion@gmail.com	W	Earthwork; 02600 Drainage and Containment; 02900 Planting	General Trades/Sub Contractor NCLCLB 1183
Carolina Construction Works Inc	Evans, Ronald	1305 E. Millbrook Rd	Raleigh, NC	27609	WAKE	919-427-1403		cworksinc@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	
Carolina Greenscapes Landscaping	Smith, Kim	112 Sundial Drive	Lexington, NC	27295	DAVIDSON	336-345-1298		cgreenscapes@yahoo.com	W	02900 Planting	General Trades/Sub Contractor 0506
Carolina Guardrail, LLC	Perkins, Carri	PO BOX 879	Colfax, NC	27235	GUILFORD	336-707-9971	336-868-3840	carri@carolinguardrail.com	W	02300 Earthwork	General Trades/Sub Contractor
CB&Hcleaningservice	Bailey, Samuel	1201 Aversboro Rd.	Garner, NC	27529	WAKE	919-828-8601	919-754-1002	SBa1136407@aol.com	B	01900 Facility Decommissioning (Hauling/Debris Removal); 02100 Site Remediation; 02200 Site Preparation; 02300	
CGSI	Collins Jr, Floyd	325 W. Mountain St.	Kernersville, NC	27284	FORSYTH	800-349-5660		fcollins@cgsi.ws	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor None; General Trades/Sub Contractor
Christmas Logistics, LLC	Christmas, Christopher	2512 Glascock St	Raleigh, NC	27610	WAKE	919-856-4191		chrischristmas01@gmail.com	B	02200 Site Preparation; 02300 Earthwork	General Trades/Sub Contractor

2019 Petition Streets

Company Name	Contact Name	Address	City, State	Zip	County	Phone	Fax	Email	Hub Certification	Construction Codes In Search Criteria	Construction License/Limitation
Clement Construction Corporation	Clement Sr., Phillip	3735 Beeson Dairy Rd.	Winston Salem, NC	27105	FORSYTH	336-661-2488	336-245-8442	clementconst@yahoo.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Trades/Sub Contractor 67844
Contractor's Cleaning Service Inc	Berry, Nathaniel	P O Box 2241	Kernersville, NC	27285	FORSYTH	336-575-0489		ccsberry@aol.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Trades/Sub Contractor
Cortez LLC	Heck, Marinette	3426 Balfour East	Durham, NC	27713	DURHAM	919-248-4444		cortezhandson@yahoo.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02200 Site Preparation;02300 Earthwork;02400 Planting	General Contractor None;General Trades/Sub Contractor
Crowned for Success	Graham, Diana	P.O. Box 12181	Durham, NC	27709	DURHAM	919-797-6744		diana@dianagraham.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	
Divine Construction Group Inc.	botchway, roland	4310 S Miami Blvd Ste 204	Durham, NC	27703	DURHAM	919-452-1183	919-206-4268	construction.divine@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02200 Site Preparation;02300 Earthwork;02600	General Contractor 73287 Limited;General Trades/Sub Contractor 73287
DK&A Cleaning Service	Daniels, Kenyatta	PO Box 10747	Raleigh, NC	27605	WAKE	919-314-7074		dkandacleaningservice@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Trades/Sub Contractor
Double D Construction Services, Inc	Doub, Tracy	5130 N. Causeway Drive	Winston-Salem, NC	27106	FORSYTH	336-922-4126	336-922-9221	ddtrucking@triad.twcbc.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor 60887 Unlimited
DreamBuilt Construction, Inc.	Thurmond, Carolyn	105 Seldom Farm Lane	Advance, NC	27006-8775	DAVIE	336-940-3852	336-940-3852	carolyn@mydreambuilt.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Contractor 75480 Unlimited
East Coast Drainage Systems	Sanders, Melissa	160 Millwood Road	Reidsville, NC	27320	ROCKINGHAM	410-937-1526	336-458-2339	melissa@eastcoastdrainagesystems.com	W	02600 Drainage and Containment	General Trades/Sub Contractor ;Plumbing/Fire Sprinkler Systems Contractor 33115
Eberhart Construction, Inc.	Eberhart, Michelle	9040 Idas Way	Willow Spring, NC	27592	WAKE	919-639-9035	919-639-9036	michelle@eberhartinc.com	W	02600 Drainage and Containment	General Contractor 37847 Unlimited
Elite Cut & Mulch Lawn Care Services	Carrington, Tammy	229 Raleigh Street	Holly Springs, NC	27540	WAKE	919-946-2321	919-762-5103	elitecutandmulch1@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02900 Planting	
Elite Safety Solutions, LLC	McLaurin, Kevin	1992 Craver Meadows Drive	Winston Salem, NC	27127	FORSYTH	336-298-1438		info@elitesafetytnc.com	B		
Erosion Supply Company	Phillis, Vicki	PO Box 91208	Raleigh, NC	27617	WAKE	919-787-0334	919-787-0335	vphillis@erosionsupply.com	W	02200 Site Preparation;02600 Drainage and Containment	
Evans Construction Services	Evans, William	120 Kingston Ct.	Clayton, NC	27527	JOHNSTON	919-333-6494	919-550-9810	wewans120@gmail.com	B	02200 Site Preparation;02300 Earthwork;02600 Drainage and Containment;02900 Planting	General Contractor 71973 Limited
FEMCO Construction LLC	Burkart, Lindsay	7302 Cessna Drive	Greensboro, NC	27409	GUILFORD	(336)669-1352		lindsayburkart@gmail.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor 70215 Unlimited
Frank Turner Jr. Backhoe Service, Inc	Turner, Frank & Stephanie	360 West Road	Angier, NC	27501	JOHNSTON	919-639-8374		alabasterbox1925@gmail.com	B	02300 Earthwork	General Trades/Sub Contractor
Fred Adams Paving Co., Inc.	Adams, Fred	P.O. Box 227	Morrisville, NC	27560	WAKE	919-468-9101	919-468-9102	courtney@fredadampaving.com	W	02200 Site Preparation	General Trades/Sub Contractor
f-t trucking llc	oduyoye, carole	6034 old orchard rd	kernersville, NC	27284	FORSYTH	336-310-3788	336-310-4744	tolafdx@triad.rr.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02300 Earthwork	General Trades/Sub Contractor
Garner-Murphy Construction Inc.	Murphy, Robin	130 Chuck Garner Trail	Graham, NC	27253	ALAMANCE	336-226-7492	336-226-7753	rgmurphy@triadbiz.rr.com	W	02300 Earthwork;02600 Drainage and Containment	General Contractor 52519 None
Goulding Construction Inc.	goulding, rhonda	PO BOX 136	clayton, NC	27528	JOHNSTON	919-763-9151		rhonda@gouldingconstruction.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor 56831 Limited
Gulleys Backhoe Service	Hines, Candice	308 Rand Rd	Raleigh, NC	27603	WAKE	919-779-7248	919-779-3028	cgh@gulleysbackhoeservices.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor 1081 None;General Trades/Sub Contractor
H & H Enterprises of Knightdale, LLC	Hardy, Henry	1001 Stamford Green Drive	Knightdale, NC	27545	WAKE	919-422-9390		hphardy1@gmail.com	B	02300 Earthwork;02600 Drainage and Containment	General Contractor 74272 Limited
Harvin Enterprises, Inc.	Harvin, Quentin	PO Box 30313	WINSTON SALEM, NC	27130	FORSYTH	803-410-8031		harvin_enterprises.inc@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02300 Earthwork	
HD3 ENTERPRISES	DANIELS III, HARRY	PO BOX 30761	RALEIGH, NC	27622	WAKE	919-373-4335		info@HD3ENTERPRISES.COM	B	01900 Facility Decommissioning (Hauling/Debris Removal);02200 Site Preparation;02900 Planting	General Trades/Sub Contractor
HGnS dba Dirtworks of the Caro	mahoney, nancy	410 Arbor Drive	Lexington, NC	27292	DAVIDSON	336-309-3594	336-248-5874	nmahoney@dirtworksnsc.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Contractor 69939 Unlimited;General Trades/Sub Contractor 69939
Hillcrest Landscape Plants and Nursery,	McCasky, Audrey	4482 North Carolina 39 Hwy North	Louisburg, NC	27549	FRANKLIN	919-709-7655		amccasky@hillcrestplants.com	B	02200 Site Preparation;02900 Planting	General Trades/Sub Contractor
Honducum Concrete, Inc.	Suazo, Ramon	P.O. Box 14968	Raleigh, NC	27620	WAKE	919-662-0388	919-662-0390	ligia@honducumconcrete.net	HA	02100 Site Remediation	General Trades/Sub Contractor
ICORE Service Company, LLC	Lamberth, Cornelious	4216 A Queen Beth Drive	Greensboro, NC	27405	GUILFORD	336-362-1646	336-617-8263	ihlamb@hotmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor 66892 Limited;General Trades/Sub Contractor
IHN Construction and Development LLC	Blaylock, Anthony	1922 South MLK Drive, Suite 72	Winston-Salem, NC	27107	FORSYTH	770-714-4900		ablav37@aol.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor None
J and P Turnkey Construction, LLC	Jones, Candace	7650 Woodpspring Dr	Whitsett, NC	27377	GUILFORD	919-464-9594	336-656-2230	info@jandpnc.com	B	02100 Site Remediation;02200 Site Preparation;02600 Drainage and Containment	General Trades/Sub Contractor
J.V. Blackwell & Sons Trucking Inc.	Blackwell, Gina	3439 Alamance Road	Burlington, NC	27215	ALAMANCE	336-229-0608	336-222-6899	jvtrucking@mindspring.com	W	02300 Earthwork	
JANEZIC BUILDING GROUP, LLC	Janezic, Lori	P.O. Box 90846	Raleigh, NC	27675	WAKE	919-870-2988	919-870-1139	ljanezic@raleigh.twcbc.com	W	02100 Site Remediation;02200 Site Preparation	General Contractor 58574 Unlimited;General Trades/Sub Contractor 58574
jessie lane's landscaping & trucking inc	Friddle, Jessica	PO Box 225	Summerfield, NC	27358	GUILFORD	336-643-4948	336-298-7188	jeslantruck@gmail.com	W	02200 Site Preparation;02300 Earthwork;02900 Planting	
Jordan's Mill Construction Inc	Shea, Brittany	3977 Jordans Mill Ct	High Point, NC	27265	GUILFORD	336-687-2879	866-401-9446	bdshea11@gmail.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor None

2019 Petition Streets

Company Name	Contact Name	Address	City, State	Zip	County	Phone	Fax	Email	Hub Certification	Construction Codes In Search Criteria	Construction License/Limitation
K Brown Construction,LLC	Brown, Kevin	265 Eastchester Drive	Highpoint, NC	27262	GUILFORD	336-307-6817		info@kbrownconstruction.com	B	02100 Site Remediation;02200 Site Preparation	General Contractor Limited
KHG Hauling, LLC	Deans, Rashawn	2415 Lambton Wood Dr	Apex, NC	27539	WAKE	919-589-3348		khghauling@gmail.com	B	02200 Site Preparation;02300 Earthwork	General Trades/Sub Contractor
Kleen It Up, Inc.	Clark, Patricia	3714 Alliance Drive Suite 104	Greensboro, NC	27405	GUILFORD	336-202-1463		kleenitup7@gmail.com	B	02100 Site Remediation	
KSM Hauling LLC	Mack, Wesley	502 Hatch St	Burlington, NC	27217	ALAMANCE	336-212-9502		KSMHauling@gmail.com	B	02200 Site Preparation;02300 Earthwork	General Trades/Sub Contractor
KSmith&Co.	Smith, Kevin	Pulliam Tingen Mine Rd	Roxboro, NC	27574	PERSON	618-203-7158		kksmith34@gmail.com	B	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Trades/Sub Contractor
KWB Grading, LLC	Graves, Alissa	1721 West Old Phillips Rd	Pinnacle, NC	27043	STOKES	336-757-2370		kwbgrading@gmail.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02300 Earthwork	
Lacayo Concrete Flatwork, Inc	Lacayo, Ernest	5798 Mt Harmony Church Road	Rougemont, NC	27572	PERSON	336-364-2252	336-364-1643	ernestlacayo@yahoo.com	HA	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	
Lakeside Utilities, Inc	Hayes, Kristie	770 Webb Mill Road	Four Oaks, NC	27524	JOHNSTON	919-963-3420	919-963-3420	lakesideutilities@gmail.com	W	02200 Site Preparation;02300 Earthwork;02600 Drainage and Containment	General Contractor 75645 Limited;General Trades/Sub Contractor
Lamar E Williams DBA KRW Hauling, LLC	Williams, Lamar	349 E Montcastle Dr Unit B	Greensboro, NC	27406	GUILFORD	336-358-7398		lamarwilliams07@yahoo.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02400 Planting	General Contractor None;General Trades/Sub Contractor
Landco Landscaping Services, LLC	Diaz, Catherine	2407 Trawick Road	Raleigh, NC	27604	WAKE	919-307-7777		landcoscapes@gmail.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02300 Earthwork;02400 Planting	
LDM Transport LLC	Maxwell, Lawrence	2204 SHINNWYCK CT	RALEIGH, NC	27604	WAKE	919-247-7609	919-212-0989	Lobloz07@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02300 Earthwork	General Contractor Limited;General Trades/Sub Contractor
Legacy Logistics LLC	Wright, Hayeon	380H Knollwood Dr. ste 311	Winston Salem, NC	27103	FORSYTH	252-292-1963		baw0522d1@gmail.com	AA	01900 Facility Decommissioning (Hauling/Debris Removal)	
LenMart Consulting & Contractor Inc.	Martinez, Lenin	PO Box 3632	Durham, NC	27702	DURHAM	919-949-3452		lenmart.consultingcontractor@gmail.com	HA	01900 Facility Decommissioning (Hauling/Debris Removal)	General Trades/Sub Contractor
LMJ Pavement Marking,LLC	Calton, Kristin	76 oak Fern lane	Willow Spring, NC	27592	WAKE	910-322-6749		paintipp@gmail.com	W	02100 Site Remediation;02200 Site Preparation	General Trades/Sub Contractor
Logan Grading, LLC	Logan, Jennifer	604 Pinnacle Hotel Rd	Pinnacle, NC	27043	SURRY	336-325-2529		logangrading@gmail.com	W	02300 Earthwork	
Long Brothers of Summerfield,	Brewer, Wendi	PO Box 11625	Winston-Salem, NC	27116	FORSYTH	336-642-1089	336-969-0375	wbrewer@longbro.com	W	02300 Earthwork	General Contractor 63874 Intermediate
Loye Grading & Tree Service,In	Loye, Pamela	1580 U.S. 29 Business	Reidsville, NC	27320	ROCKINGHAM	336-349-4431	336-349-4431	loyegrading@triad.rr.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor None;General Trades/Sub Contractor
M.I.C Inc	Clay, Loraine	4917 Howe Street	Durham, NC	27705	DURHAM	919-282-2894		mayoassistant@gmail.com	B	02200 Site Preparation	
MAI Trucking LLC	Baker, Brandi	1250 Revolution Mill Dr	Greensboro, NC	27405	GUILFORD	336-944-1785		mailogisticsllc@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	
Mayes Landscaping & Concrete Inc.	Mayes, Ricky	PO Box 984	Winston Salem, NC	27102	FORSYTH	336-682-3845	336-245-4657	rickyamayes@mayeslandscaping.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 62266 Limited;General Trades/Sub Contractor
McCain Striping Service, Inc.	McCain, John	5711 Craven Road	Browns Summit, NC	27214	GUILFORD	336-656-3480	336-656-7144	jmc092237@aol.com	B		
MISE Construction Group	Middleton, Tayler	709 Lipscomb Rd	GREENSBORO, NC	27410	GUILFORD	828-320-4446		projects@miseconstruction.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor Unlimited;General Trades/Sub Contractor
MT MURPHY CONSTRUCTION, INC	BRYANT, TONY	P.O. BOX 90427	RALEIGH, NC	27675	WAKE	919-937-8643		TONY@MTMURPHYINC.COM	W	02300 Earthwork	General Contractor 39458 Unlimited;General Trades/Sub Contractor
Multas Enterprises	Foy, Bernard	2806 Reynolda Road	Winston-Salem, NC	27106	FORSYTH	336-655-1324	336-448-0919	foyb@multas.net	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor 81530 Limited;General Trades/Sub Contractor
Muter Construction LLC	Muter, Beth	100 N. Arendell Ave.	Zebulon, NC	27597	WAKE	919-404-8330	919-400-4253	bmuter@muterconstruction.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 73095 None;General Trades/Sub Contractor 73095
OcoroEnterprises	Ocoro, Gustavo	800 Taylor St	Durham, NC	27701	DURHAM	919-923-9324		gustavocoro@yahoo.com	HA	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	
One Accord Services	Young, Monique	2nd Floor	Raleigh, NC	27612	WAKE	919-333-9586		estimating@oneaccordservicesllc.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor None;General Trades/Sub Contractor
P & J Contract Hauling of Clayton, Inc	Tyree, Mary	2023 Quail court	Clayton, NC	27520	JOHNSTON	919-553-6080	919-938-1240	pjcontracthauling97@nc.rr.com	W	01900 Facility Decommissioning (Hauling/Debris Removal)	General Trades/Sub Contractor
P&S Grading LLC	Bolick, Karen	4211 Belvoir Drive	Greensboro, NC	27406	GUILFORD	336-601-4557	336-285-9776	karen@psgrading.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Contractor 70444 Unlimited
PEARCE'S GRADING & LANDSCAPING,LLC	PEARCE, TONYA	549 STONE SOUTHERLAND ROAD	LOUISBURG, NC	27549	FRANKLIN	919-497-5025	919-497-5026	pearcesgrading@earthlink.net	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	
Persessi, LLC	Ingram, Brian	714 9th Street	Durham, NC	27705	DURHAM	240-858-9584		Brian.Ingram@persessi.com	B		
PGA Construction Inc	Reeser, Kelli	9 Crosswinds Estates Dr.	Pittsboro, NC	27312	CHATHAM	919-610-1260		pgaconstruct@aol.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02900 Planting	General Contractor 67249 Limited
PINAM CONSTRUCTION INC	Thacker, Angelica	5115 Guess Rd	Durham, NC	27712	DURHAM	919-357-8301		angle@pinamconstruction.com	HA	02100 Site Remediation;02200 Site Preparation;02600 Drainage and Containment	General Contractor 78381 Limited;General Trades/Sub Contractor 78381
Praylor Construction Company	Praylor, Michael	4005 Pond Valley Court	Mc Leansville, NC	27301	GUILFORD	336-471-8987	866-334-3051	mpraylor@aol.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 702 Limited

2019 Petition Streets

Company Name	Contact Name	Address	City, State	Zip	County	Phone	Fax	Email	Hub Certification	Construction Codes In Search Criteria	Construction License/Limitation
Pro-Mark Construction	Bunns, Rena	4010 Fayetteville Street	Durham, NC	27713	DURHAM	919-294-9972	919-294-9972	gburns@promarkconstruct.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor Intermediate
QST, Inc	Fleming, Warren	157 Hickory Street	North Cooleemee, NC	20874	DAVIE	301-916-4522	301-972-6301	wkfleming@qst-inc.com	B	02100 Site Remediation;02300 Earthwork;02600 Drainage and Containment;02900 Planting	
RANKIN GRADING INC.	RANKIN, JR., JULIUS	821 NORTH ENGLISH STREET	GREENSBORO, NC	27405	GUILFORD	336-272-7942	336-272-6703	rankinggradinginc@bellsouth.net	B	02200 Site Preparation;02300 Earthwork	
Rankin III Grading, LLC	Rankin III, Julius	119 Maxfield Road	Greensboro, NC	27405	GUILFORD	336-954-0700		jrankin3@bellsouth.net	B	02300 Earthwork	General Contractor 70927 Limited
RBS Grading & Excavating, INC.	Jones, Richard	4206 Holder Rd.	Durham, NC	27703	DURHAM	919-596-5669	919-596-1191	rjones@rbsgrading.com	AI	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 38638 Unlimited;General Trades/Sub Contractor -Plumbing/Fire
RDU Paving Inc.	Lundholm, Jeanette	5415 Fayetteville Road	Raleigh, NC	27603	WAKE	919-329-7300	919-329-7301	JLundholm@rdupaving.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 62537 Unlimited;General Trades/Sub Contractor 62527
Reach Construction Group, LLC	Martin, Brandon	7501 Falls of the Neuse Rd	Raleigh, NC	27615	WAKE	919-842-4380		bm@reachconstruct.com	B	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Contractor 73359 Unlimited;General Trades/Sub Contractor
RFI Construction LLC	Burrows, Rupert	1451 S. Elm Eugene St.	Greensboro, NC	27406	GUILFORD	336-510-0441	336-510-0442	rburrows@rficonstruction.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor None;General Trades/Sub Contractor
Roadrunner Concrete LLC	Vasquez, Ossiris	5223 LLOYD HILL LN	GRAHAM, NC	27253	ALAMANCE	336-675-6238	336-437-8722	contact@roadrunnerconcrete.com	HA	02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Trades/Sub Contractor
Roadworks Construction Company	Biagini, Cheryl	P.O. Box 38000	Raleigh, NC	27627	WAKE	860-881-0044		cbiagini@roadworksconstruction.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Trades/Sub Contractor
Royals Contracting, Inc.	Royals, Pat	PO Box 91359	Raleigh, NC	27675	WAKE	919-847-3811	919-845-9321	proyals@royalscontracting.com	W	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor 59612 Unlimited
Rumburg Grading Inc.	Rumburg, David	PO Box 9	Walkertown, NC	27051	FORSYTH	336-595-8830	336-595-8851	mackpride@me.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Contractor 70763 Limited
S and J of Raleigh	Spears, Shawn	3235 Mclean Chapel Church RD	bunnlevel, NC	28323	HARNETT	919-669-9462	910-893-3065	shawn@sjofraleigh.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 55247 Limited;General Trades/Sub Contractor 55247
Samsons Construction Inc.	Toliver, Samuel	8025 North Point blvd	winston salem, NC	27106	FORSYTH	336-831-7098	855-352-8850	samsonsconstruction@samsonsinc.com	B	02200 Site Preparation;02600 Drainage and Containment;02900 Planting	General Contractor 78308 Limited;General Trades/Sub Contractor
sass seeding llc	smith, anna	1390 gumtree rd.	winston-salem, NC	27107	DAVIDSON	336-764-2319	336-764-2319	sassseeding@aol.com	W	02900 Planting	
Seal Brothers Contracting, LLC	Seal, Mari	3618 W. Pine Street	Mount Airy, NC	27030	SURRY	336-786-2263	336-789-7325	mari@sealbrothers.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Trades/Sub Contractor
SKC, Inc.	Williamson, Kellie	POB 386	Seagrove, NC	27341	RANDOLPH	336-873-9494	336-873-9498	skcinc@embarqmail.com	W	02200 Site Preparation	General Contractor 39936 Unlimited;General Trades/Sub Contractor 39936
Solomon's Enterprise LLC	Solomon, Jennifer	PO Box 179	Timberlake, NC	27583	PERSON	336-504-4630		solomonsenterprisellc@outlook.com	W	01900 Facility Decommissioning (Hauling/Debris Removal)	
Southern Garden, Inc	Lichtenstein, Russell	P. O. Box 808, Apex, NC 27502	Cary, NC	27519	WAKE	919-362-1050	919-363-9222	estimating@southerngardeninc.com	W	02100 Site Remediation;02200 Site Preparation;02600 Drainage and Containment;02900 Planting	General Trades/Sub Contractor Landscaping #CL0740
Sparkle & Shine Cleaning Servi	Lozinsky, Steven	1017 Classic Rd	Apex, NC	27539	WAKE	919-466-9001	919-466-9002	steve@sparkle-shinecleaning.com	W	01900 Facility Decommissioning (Hauling/Debris Removal)	General Trades/Sub Contractor
Splendid Services	dodson, kenneth	P.O. Box 1134	Greensboro, NC	27402	GUILFORD	(336)991-2509		splendidsvc67@hotmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02900 Planting	General Trades/Sub Contractor
SRS Inc.	Edwards, Monte	PO Box 38771	Greensboro, NC	27438	GUILFORD	336-580-9000	615-206-0201	medwards@srsincorp.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 64370 None
Stewart Hauling and Backhoe Inc.	Stewart, Wilmoth	5760 Brinkley Road	Belews Creek, NC	27009	FORSYTH	336-595-2601	336-595-2632	stewarthauling@hotmail.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02300 Earthwork	General Trades/Sub Contractor
Stewart's Grading & Hauling, Inc	Stewart, Amber	3420 NC 8 & 65 HWY	Germanton, NC	27019	STOKES	336-536-1047	336-536-1049	arstewart@stewartshginc.com	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	
Tamco Construction Site Management LLC	Watson, Tammy	1922 South Martin Luther King Drive	Winston-Salem, NC	27107	FORSYTH	336-995-4528		tamcocsm@gmail.com	B	02200 Site Preparation;02600 Drainage and Containment	General Trades/Sub Contractor
Tetraline Construction & Utility Service	Restrepo, Jose	1000 Centre Green Way	Cary, NC	27513	WAKE	919-717-5646		jose.restrepo@tetralinecorp.com	HA	02600 Drainage and Containment	General Contractor None
The Daniele Company	Shealey, Gloria	P.O. Box 1228	Durham, NC	27702	DURHAM	919-682-6700	919-682-6711	gcshealey@thedanieleco.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02200 Site Preparation;02600 Drainage and Containment	General Contractor 59878 Unlimited;General Trades/Sub Contractor
totalenviroandseptic	Hall, Bunni	1007 Cumnock Road	Sanford, NC	27330	LEE	(919)708-5056	(919)775-3199	bunni@totalenviro.net	W	02600 Drainage and Containment	
Transou and Son Landscaping	Transou, Sherman	144 Cherryview Lane	Winston Salem, NC	27105	FORSYTH	336-782-3020	336-782-3020	transoulanscaping@yahoo.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	General Contractor None
TTD Construction, Inc.	Davis, Tahd	82 Shadowsmoke Lane	Siler City, NC	27344	CHATHAM	919-612-4611	919-612-4611	tttd2construction@gmail.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	General Contractor 79220 Limited
Turner Utilities Inc.	Turner, Shaun	2221 Springhill Ave	Raleigh, NC	27603	WAKE	919-723-3802	919-890-0698	Turnerutilities@hotmail.com	B	02200 Site Preparation;02600 Drainage and Containment	General Contractor 70135 Limited;General Trades/Sub Contractor 70135
U Nita Stripe, Inc.	Smith, Julie	5428 Davis Mill Road	Greensboro, NC	27406	GUILFORD	336-404-5322	336-674-0769	juliesmithdd@bellsouth.net	W	02100 Site Remediation;02200 Site Preparation;02300 Earthwork;02600 Drainage	General Contractor 71457 Limited;General Trades/Sub Contractor
Vanhook Trucking Inc.	Vanhook, Joe	5202 Old Greensboro Road	Chapel Hill, NC	27516	ORANGE	919-933-4971	919-967-7960	vantruck@bellsouth.net	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300 Earthwork	
viper express couier llc	chappell, nikia	905 statler dr.	Durham, NC	27703	DURHAM	888-851-6580	866-480-9456	shawn@viperdelivers.com	B	01900 Facility Decommissioning (Hauling/Debris Removal)	137

2019 Petition Streets

Company Name	Contact Name	Address	City, State	Zip	County	Phone	Fax	Email	Hub Certification	Construction Codes In Search Criteria	Construction License/Limitation
Vistabution, LLC	Mann, Clarence	8315 Six Forks Road	Raleigh, NC	27615	WAKE	919-844-9375		cmann45@bellsouth.net	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor 69958 Unlimited
W W Trucking & Demolition Serv	Williams, Broderick	3221 Carver School RD.	Winston-Salem, NC	27105	FORSYTH	336-462-7696	336-703-0755	BWbuckone@aol.com	B	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Trades/Sub Contractor
W. E. GARRISON CO	Garrison, Colleen	5820 Fayetteville Road	Raleigh, NC	27603	WAKE	919-772-4144	919-772-4860	colleeng@wegarrison.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor None;General Trades/Sub Contractor
W.C. Construction Company, LLC	Cockerham Jr., William	P.O. Box 25051	Winston Salem, NC	27114	FORSYTH	336-231-2622	336-721-3421	info@wcconstructionco.com	B	02100 Site Remediation;02200 Site Preparation	General Contractor 63557 Unlimited
Winstead Landscape Services LLC	Winstead, Willie	11010 lake Grove Blvd. Ste. 100#402	MORRISVILLE, NC	27560	WAKE	919-931-6440		winsteadlandscape@gmail.com	B	02900 Planting	General Contractor 1742 Unlimited;General Trades/Sub Contractor 1742
YADKIN VALLEY PAVING, INC.	Ferguson, Gina	121 Cloverleaf Drive	Winston Salem, NC	27103	FORSYTH	336-765-7900	336-765-4858	ginaferguson@yadkinvalleypaving.com	W	01900 Facility Decommissioning (Hauling/Debris Removal);02100 Site Remediation;02200 Site Preparation;02300	General Contractor 41878 None

APPENDIX C



CERTIFIED UNDERUTILIZED BUSINESS ENTERPRISE (UBE) REPORTING FORMS

CONTRACT: ST-286

APPENDIX C

CITY OF DURHAM SUBCONTRACTOR MONTHLY RECORD OF PAYMENT REPORT

THIS DOCUMENT MUST REFLECT ALL SUBCONTRACTORS & MUST BE SUBMITTED WITH MONTHLY INVOICE FOR PAYMENT

PROJECT NAME:	DATE FORM SUBMITTED:
CONTRACT#:	WORK PERIOD ENDING:
COMPANY NAME:	ADDRESS:
FEDERAL TAX ID#:	CONTACT PERSON:

Subcontractor/Vendor ID <small>(Street Address/Zip/Telephone/ Ownership Status)</small>	VENDOR#	Description of Work	Total Sub-Contract Amount	Amount Paid For The Period	Total Amount Paid To-Date	Percentage Of Work Completed	Scheduled Start Date	Scheduled End Date
Total M/SDBE Subcontracts Awarded / %				Total W/SDBE Subcontracts Awarded / %				
Total M/SDBE Dollars Paid-To-Date / %				Total W/SDBE Dollars Paid-To-Date / %				
Total Non-Minority Subcontracts Awarded / %				Total Non-W/SDBE Subcontracts Awarded / %				
Total Non-Minority Dollars Paid-To-Date / %				Total Non W/SDBE Dollars Paid-To-Date/%				

The undersigned certifies that the information recorded above is correct, and that each of the representations set forth above is true. The undersigned further acknowledges that any misrepresentation hereon may result in termination of contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

Company Representative _____ **Title:** _____ **Date:** _____

APPENDIX D



NON-COLLUSION AFFIDAVIT FORMS FOR BIDDER AND SUBCONTRACTOR

CONTRACT: ST-286

NON-COLLUSION AFFIDAVIT OF BIDDER

State of _____ County of _____

_____, being first duly sworn, deposes and says that:

- 1. He is _____ of _____, the Bidder that has submitted the attached Bid;
- 2. He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3. Such Bid is genuine and is not a collusive or sham Bid;
- 4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from Bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy connivance or unlawful agreement any advantage against the _____ (Local Public Agency) or any person interested in the proposed Contract; and
- 5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

Title

Subscribed and sworn to before me this

_____ day of _____, _____

Title

My Commission Expires _____

NON-COLLUSION AFFIDAVIT OF SUBCONTRACTOR

State of _____ County of _____

_____, being first duly sworn, deposes and says that:

1. He is _____ of _____, hereinafter referred to as the "Subcontractor";

2. He is fully informed respecting the preparation and contents of the Subcontractor's Proposal submitted by the Subcontractor to _____, the Contractor for certain work in connection with the _____ Contract pertaining to the Project in _____ (City or County and State);

3. Such Subcontractor's Proposal is genuine and is not a collusive or sham proposal;

4. Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract or to refrain from submitting a Proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Bidder, firm or person to fix the price or prices in said Contractor's Proposal, or to fix any overhead, profit or cost element of the price or prices in said Contractor's Proposal, or to secure through collusion, conspiracy connivance or unlawful agreement any advantage against the _____ (Local Public Agency) or any person interested in the proposed Contract; and

5. The price or prices quoted in the Subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

Title

Subscribed and sworn to before me this

_____ day of _____, _____

Title

My Commission Expires _____

APPENDIX E



BID BOND FORMS

CONTRACT: ST-286

BID BOND for the City of Durham

Contract name and number or other description of the Contract: ST-286 PETITION STREETS 2021

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 one:*

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

(\$)

five percent of the amount of the proposal

Date of execution of this bond: Obligee: CITY OF DURHAM, 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 Durham, 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 Durham, 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

APPENDIX F



NOT USED

**CONTRACT: ST-286 PETITION SEWER ON
GARRETT AND MIMOSA 2020**

APPENDIX G



PERFORMANCE BOND AND PAYMENT BOND FORMS

CONTRACT: ST-286

PERFORMANCE BOND AND PAYMENT BOND

Date of Contract: _____

Contract Name and Number: ST-286 PETITION STREETS 2021

Name of Principal (Name of Contractor): _____

Name of Surety: _____

Name and Address of Surety's NC Resident Agent: _____

Contracting Body: CITY OF DURHAM, a North Carolina municipal corporation
Amount of Performance Bond (in words and figures): _____ dollars (\$_____)

Amount of Payment Bond: same dollar amount as the dollar amount of Performance Bond.

Date of Execution of these Bonds: _____

* * * * *

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, 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 with respect to the Work, scope of work, and specifications.

* * * * *

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 NC 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)

ATTEST:

_____ By: _____

_____ Secretary _____ President

(Affix corporate seal)

(name of Surety)

(name of attorney in fact)

(Affix corporate seal)

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

ACKNOWLEDGEMENT OF CONTRACTOR'S EXECUTION OF CONTRACT,
PERFORMANCE BOND, AND PAYMENT BOND

State of _____ County of _____

I, _____, a notary public for the aforesaid county and state, certify that _____ personally appeared before me this day, and acknowledged that he or she is _____ Secretary of _____, a corporation, and that by authority duly given and as the act of the corporation, the foregoing (1) Contract with the City of Durham and (2) Performance Bond and Payment Bond with respect to the Contract, were signed in its name by its _____ President, whose name is _____, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary.

This the ____ day of _____, _____.

NOTARY PUBLIC

My commission expires: _____

ACKNOWLEDGEMENT OF SURETY'S EXECUTION OF
PERFORMANCE BOND, AND PAYMENT BOND

State of _____ County of _____

I, _____, a Notary Public 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 Performance Bond and Payment Bond, in both of which bonds the contracting body is the City of Durham, and that he or she executed said bonds, under the seal of said Surety, on behalf of said Surety.

This the ____ day of _____, _____.

NOTARY PUBLIC

My commission expires: _____

APPENDIX H



REIMBURSABLE SALES AND USE TAX STATEMENT FORMS

CONTRACT: ST-286

APPENDIX I



SUBMITTAL TRANSMITTAL FORM AND SUBMITTAL REGISTER FORM

CONTRACT: ST-286

PLACE CONTRACTOR SUBMITTAL
REVIEW STAMP BELOW

PLACE ENGINEER/CITY SUBMITTAL
REVIEW STAMP BELOW

APPENDIX J



**CITY OF
DURHAM**

PRIMAVERA & PDRX

CONTRACT: ST-286

CONTRACT AND PROJECT MANAGEMENT SYSTEM - REQUIREMENTS AND WORKFLOW

Software Overview and Computer Requirements

The Contract will make extensive use of the Primavera Contract and Project Management system. The system consists of three software tools, namely; 1) *Contract Manager* for Contract Management, and 2) *P6 Project Management* and 3) *PDRX*. The Contractor is required to utilize all three software tools as described in this section, and other relevant sections of the Contract Specifications. If the Contractor is not familiar with this software he/she is highly encouraged to visit the web site www.primavera.com and gain the understanding necessary prior to bidding.

It will be the Contractor's responsibility to provide the appropriate computers and any and all related and necessary peripherals for this use. The computers shall have Windows XP Service Pack 2, installed as an operating system, along with Windows Internet Explorer Version 7 browser for web access. The Primavera *Contract Manager* and *P6* and *PDRX* software tools are accessed through the web browser using Java run-time plug-in technologies. The Java plug-in is automatically downloaded and installed during initial web browser access to the software. This process requires "Administrative" privileges on the computer, and the Contractor shall be responsible for this entire process. It is suggested that the broadband connection speed be approximately 1.5 Mbps to allow for responsive data transfer to/from the City network. It is suggested that the computer's operating system be maintained with updates throughout the Contract duration.

City staff will be available for technical advice. However, the City staff will not operate, install, or troubleshoot any of the Contractor's hardware or software issues. The Contractor is solely responsible for the functionality of their computer systems. The City will accept no liabilities arising from the Contractor's use of this software.

Project Schedule

Upon award of the Contract, the Contractor will receive a Notice to Proceed to develop a comprehensive *P6* Schedule. Subsequent to completion and City approval of the *P6* Schedule, the Contractor will receive a Notice to Proceed for Construction. No site work shall commence without receiving the Notice to Proceed for Construction from the City.

Prior to preparation of the *P6* Schedule, the Contractor shall provide a proposed Organization Breakdown Structure (OBS) and Work Breakdown Structure (WBS) to the City for review, comment, and approval. The WBS shall reflect the each of the Contract pay items in the bid proposal.

The WBS and overall project schedule in *P6* shall be linked to the Contract as established in Primavera *Contract Manager*. This link will allow for automatic updates of the project schedule as the work is completed and logged into Contract Manager. The Contractor is responsible for periodic updates to the *P6* Schedule as determined by the City at the time of the pre-construction meeting.

Contract Manager Setup

A single project shall be established in *Contract Manager* for the Contract. The project shall have as a schedule of values containing the Contractor's quantity estimate for each pay item in the bid proposal along with the Contract unit price. This will establish a budget for the Contract.

The City staff has developed software which will allow the data described in the paragraph above to be batch loaded into *Contract Manager* via Microsoft Excel spreadsheets to streamline data entry into the *Contract Manager* graphical user interface (GUI). The City will provide the Excel Spreadsheet templates to the Contractor. The Contractor will prepare the schedule of values based on the bid items.

The Contractor will submit the completed spreadsheets to the City staff for review and approval. Once the submittal is approved, the City staff will batch load the project data into *Contract Manager*. The Contractor will be responsible to check and verify the data once it is in *Contract Manager*, and perform any cleanup of the data that may be necessary. The Contractor will complete the setup by testing the linkage between *Contract Manager* and *P6*.

Daily Report Work Flow, Review and Approval Process

Once all of the software setup in the paragraphs above is complete and the Contractor has been issued a Notice to Proceed for Construction, the daily report work flow process can begin. The Contractor is responsible for logging daily reports in *PDRX* on the next business day following the work performed. The daily reports will be logged individually in *PDRX*.

The City Inspector shall review the daily report the following business day and either approve it if satisfactory, or route the report back to the Contractor with notes indicating the areas of disagreement. The Contractor and City Inspector shall work together to come to an agreement on the daily report so that it can be approved prior to the payment process described below.

The Contractor shall use the "Telephone Logs" module in *Contract Manager* to document important phone calls pertaining to project activities. The Contractor shall use the "Attachments" feature in the Daily Report module to electronically attach any pertinent documents, drawings, or photos.

Payment Requisition Process

All payment requisition(s) shall be prepared using the *Contract Manager* software. As each payment requisition is generated, the software will automatically pull-in the quantities from (each of) the daily reports for the period that the requisition is being prepared for. It is important that the daily reports are entered correctly and approved on a timely basis to avoid delay in the payment requisition process. Payment requisitions will not be approved unless they are created using this process.

Once the Contractor has prepared a *Contract Manager* payment requisition, the "ball-in-court" shall be assigned to the City Inspector for review and approval. The City Inspector shall review the payment requisition in the following business days and either approve it if satisfactory or assign the "ball-in-court" status back to the Contractor with notes which indicate the areas of

disagreement. The Contractor and City Inspector shall work together to come to an agreement on the contents of the *Contract Manager* payment requisition.

Once the *Contract Manager* payment requisition(s) for the project(s) worked on during a billing period are approved, the Contractor shall print the AIA form(s) from *Contract Manager*. The Contractor shall summarize them into a 702 cover sheet, and incorporate all of the forms into the payment request package which includes other the forms and certificates as described in these contract documents.

Issues, Shop Drawings, Photographs and Project Correspondence

Contract Manager shall serve as the repository and clearing center for all digital correspondence generated during this project. *Contract Manager* has electronic logs for issues, shop drawings, photographs, project correspondence and e-mail. The *Contract Manager* software allows for the “ball-in-court” to be set on items which need to move back and forth for discussion and resolution prior to approval. The Contractor, and City Inspectors and staff, shall use these features for all correspondence generated on this Contract.

APPENDIX K



NOT USED

CONTRACT: ST-286

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX L



City of Durham
Finance Policy 603
Bidder Safety Record Review

CONTRACT: ST-286

City of Durham Finance Policy 603

Bidder Safety Record Review Form

A. Bidder Safety Qualifications

The following safety information shall be requested of all contractors submitting bids to the City as part of the solicitation and advertising for construction and repair work with the City when the total construction and repair contract amount is expected to equal or exceed the minimum contract amount requiring compliance with State bidding laws.

The City requires that all bidders provide the following information regarding their safety history:

1. OSHA DART Incident Rate

Provide the bidder's DART Incident Rate calculated from OSHA's Form 300A for the last three years and the other required information in the table below. The bidder must attach all supporting documentation and calculations including certified OSHA forms.

YEAR	CONTRACTOR DART INCIDENT RATE	INDUSTRY DART INCIDENT RATE	INDUSTRY FIELD AND CODE

2. Experience Modification Rate (EMR)

Provide the Bidder's most recent Experience Modification Rate (EMR) based on insurance claims history. The bidder must provide the source of the EMR information and contact information of insurer entity providing the EMR.

YEAR	CONTRACTOR EMR	INDUSTRY FIELD AND CODE	NAME AND CONTACT INFO FOR EMR INFORMATION

3. Answer the following OSHA Specific Questions:

(a) Within the last 2 years, has the bidder received any citations classified by OSHA as being (1) serious, (2) willful and/or (3) repeat violations where your company operates?

Yes _____ No _____

If yes, attach a copy of each such citation and violation.

(b) Has the Bidder experienced any work-related fatalities within the last five years?

Yes _____ No _____

(c) Has the Bidder had any citations issued by OSHA as a result of work related fatalities within the past 5 years?

Yes _____ No _____

(d) Is the Bidder under investigation for any work-related fatalities?

Yes _____ No _____

(e) If your answer is “yes” to 3(b), (c) or (d), please provide a copy of the citation(s), list of number(s) of fatalities and documented explanation of the fatality.

4. Safety Plan:

(a). Does the company have a written safety program that includes responsibility for all aspects of safety management?

Yes _____ No _____

(b) Does the company have a written plan for safety training of new employees and ongoing training of existing employees?

Yes_____ No _____

(c) Does the company have documented evidence of safety training that they have conducted?

Yes_____ No _____

(d) If the company has employees with limited English ability, does the company have a written plan for ensuring that their employees understand the training they are being given?

Yes_____ No _____

(e) Do all supervisors have an appropriate documented level of OSHA training (e.g., a minimum of 30 hour OSHA construction safety training)?

Yes_____ No _____

(f) Do employees have documented basic OSHA 10 hour construction safety training?

Yes_____ No _____

(g) Does the company have a documented Hazard Communication Program?

Yes_____ No _____

5. Required Written Explanation of Safety Record

If the bidder has any of the following:

(a) DART Incident Rate greater than its industry average,

(b) an EMR greater than 1.0,

(c) answered “yes” to any of the OSHA Specific Question above, or

(d) answered “no” to any of the Safety Plan questions, the bidder shall provide the City, in its bid, a detailed written explanation of its safety record and the reasons why such safety history is NOT representative of its future performance and what specific actions it has taken to improve its overall safety record. Failure to provide a written explanation of its safety record pursuant to this paragraph may be deemed as non-responsive by the City.

B. Evaluation of Safety Information

1. No Further Evaluation is required of the lowest bidder if the following responses are provided:

(a) Bidder has a 3-year average DART Incident Rate equal to or better than the industry average;

(b) Bidder has an EMR rating equal to or less than 1.0;

(c) Bidder response is “no” for all OSHA Specific Questions; and

(d) Bidder answers “yes” to all of the Safety Plan questions.

2. If any of the following applies to the lowest bidder:

- (a) it has a 3-year average DART Incident Rate worse than the industry average;
- (b) an EMR greater than 1.0;
- (c) the bidder responds “yes” to any or all of the OSHA Specific Questions, or,
- (d) the bidder response “no” to any or all of the Safety Plan questions,

then the bidder’s documentation shall be referred to the City’s Risk Management Division together with the bidder’s written explanation of its safety record. If, after reviewing the bidder’s documentation, the City’s Risk Management Division and the department issuing the bid believes the lowest bidder’s safety record is sufficiently poor such that it is reflective of the bidder’s overall performance and quality of work, the bid shall be considered non-responsive and staff shall recommend rejection of the bid to the City Manager or City Council as appropriate according to their contract approval and award authority. If, however, after reviewing the bidder’s documentation, the City’s Risk Management Division and the department issuing the bid believes the past safety record of the lowest bidder is not representative of the work that it can perform and/or it would be in the best interest of the City to enter into such contract, staff shall recommend award of the contract by either the City Manager or City Council as appropriate according to their contract approval and award authority.

APPENDIX M



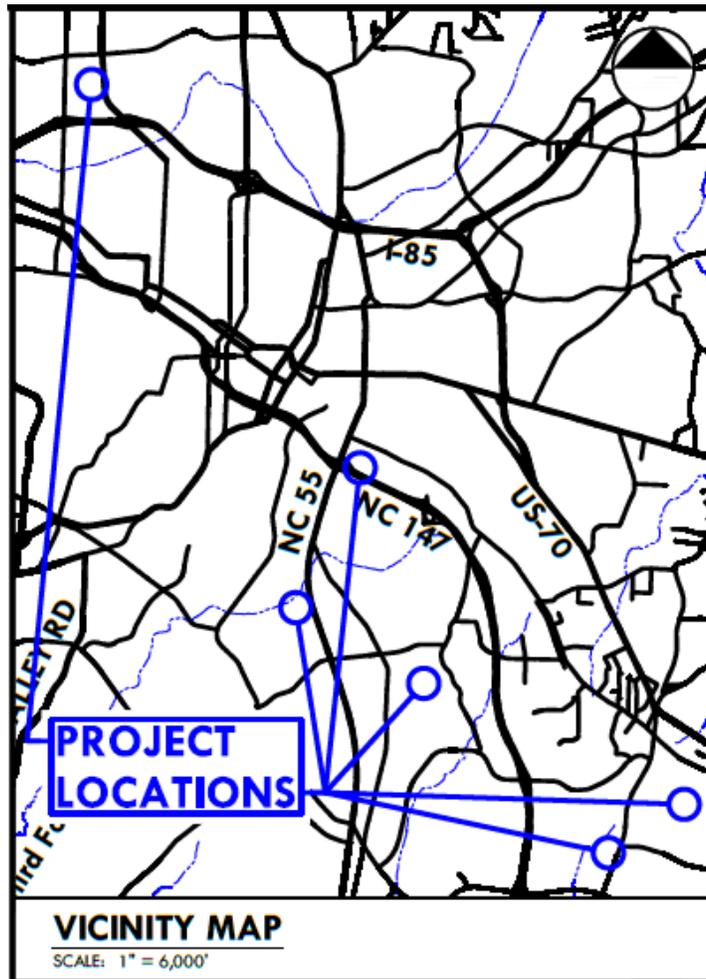
PROJECT SPECIFIC INFORMATION

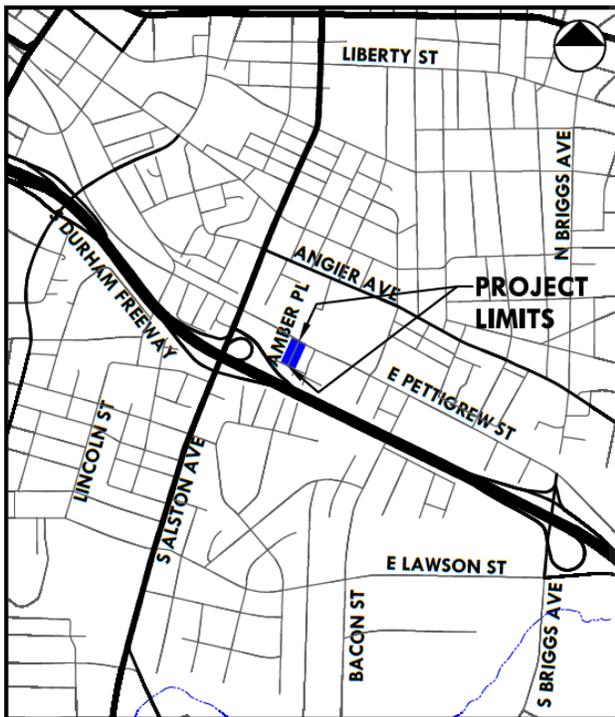
CONTRACT: ST-286

PROJECT SPECIFIC INFORMATION

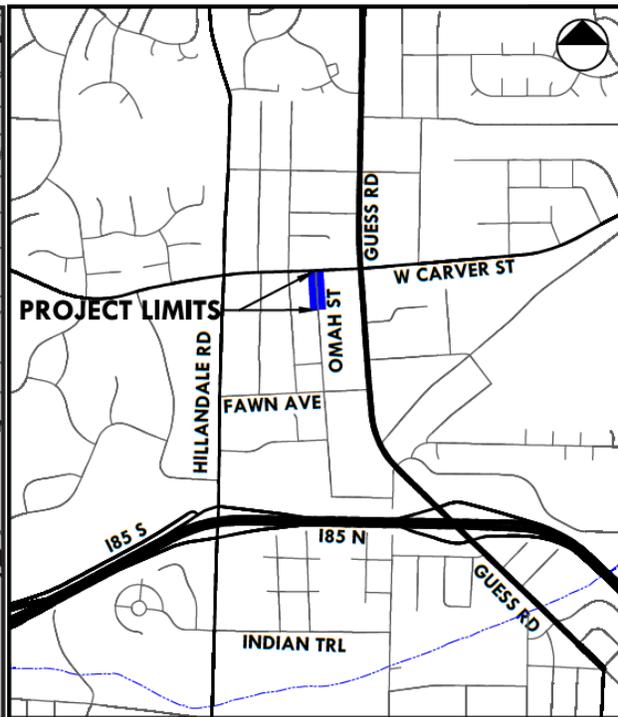
I. GENERAL INFORMATION

- a. The City of Durham may be soliciting bids for a person or firm to provide inspection services.
- b. The project is located in various locations throughout the City of Durham. All locations are City maintained streets.
- c. The following list contains the locations for this project.
 - **Amber Place** from E Pettigrew St to Humphrey St.
 - **Brunson Street** west of South Miami Blvd
 - **Chalmers Street** northwest of Hemlock Ave
 - **Lang Street** from Glenco Rd to 131 Lang St
 - **Leonard Drive** west of Glen Cook Rd
 - **Omah Street** from West Carver St to 3010 Omah St
 - **Turner Street** from Leonard Dr to Magnolia Tree Ln
- d. Please see the project vicinity maps below.

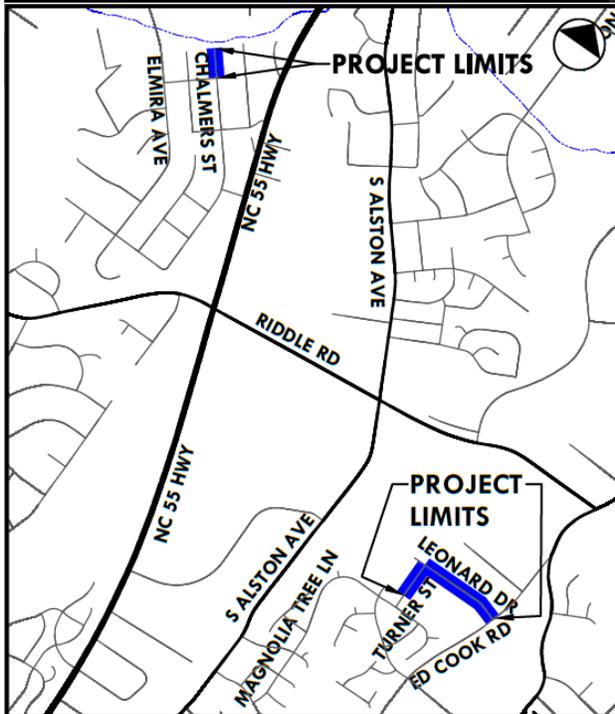




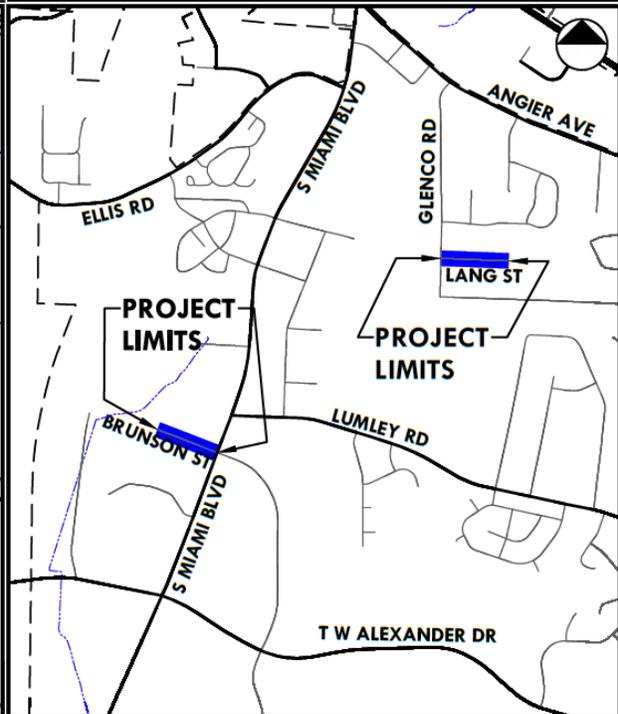
AMBER PLACE VICINITY MAP
SCALE: 1" = 1,000'



OMAHA STREET VICINITY MAP
SCALE: 1" = 1,000'



CHALMERS ST, LEONARD DR & TURNER ST VICINITY MAP
SCALE: 1" = 1,000'



BRUNSON STREET & LANG STREET VICINITY MAP
SCALE: 1" = 1,000'

- e. In the event that an underground utility conflict is discovered, additional time will be required to design a fix.
- f. The contractor will be responsible for maintaining convenient access at driveways with incidental ABC stone for ramp-ups. Driveway vertical drop-offs must be limited to 1.5” or less.
- g. Curb Inlets should be constructed flush with the curb and gutter in accordance with the drawings and details.

II. PUBLIC COMMUNICATION & ENGAGEMENT

- a. The contractor shall comply with the City’s Communication Plan.
- b. Prior to the prosecution of work, the Contractor shall provide a 15 calendar day advance written notice to all individuals, homeowners, business owners, utilities, and others along the line of construction who may be affected by any aspect of the work that is contemplated. Such notice may be delivered by door contact, door knob hanger, or letter and shall briefly describe the nature and estimated timetable of the work and shall provide any additional information or instructions that may be desirable or necessary. The notice shall also include the name and telephone number of the contact person for further information related to the project. A proposed draft of the written notice shall be submitted by the Contractor to the Engineer for his approval prior to the initiation of any work.
- c. The contractor shall use variable message boards as needed to comply with the Communication Plan and costs shall be incidental to the contract.
- d. The contractor shall comply with the City’s Public Engagement Plan and coordinate with the City to promote equity.

III. PUBLIC RIGHT-OF-WAY ACCESSIBILITY GUIDELINES (PROWAG) COMPLIANCE

- a. All construction shall comply with City and PROWAG standards.
<https://durhamnc.gov/3626/Construction-Standards>

IV. CONTINGENCY ALLOWANCES

- a. The City of Durham may establish a Contingency Allowance to offset costs incurred in excess of the executed bid amounts. The amount of funds encumbered in the Contingency Allowance shall be solely at the discretion of the City of Durham. The Contingency Allowance shall be established upon selection of the apparent low bidder.
- b. Contractor's costs for Products, delivery, installation, labor, insurance, payroll, taxes, bonding, equipment rental, overhead and profit will be included in Change Orders authorizing expenditure of funds from this Contingency Allowance.
- c. Funds will be drawn from Contingency Allowance only by Change Order.
- d. At closeout of Contract, funds remaining in Contingency Allowance will be credited to Owner by Change Order.

V. CHANGE PROCEDURES

- a. Submittals: Submit name of individual authorized to receive change documents, and be responsible for informing others in Contractor's employ or Subcontractors of changes to the Work.
- b. The Engineer will advise of minor changes in the Work not involving adjustment to Contract Price or Contract Time by issuing supplemental instructions.

- c. The Engineer may issue a Notice of Change including a detailed description of proposed change with supplementary or revised Drawings and specifications, a change in Contract Time for executing the change.
- d. Contractor may propose changes by submitting a request for change to Engineer, describing proposed change and its full effect on the Work. Include a statement describing reason for the change, and effect on Contract Price and Contract Time with full documentation and a statement describing effect on Work by separate or other Contractors. Document requested substitutions in accordance with Section 01 60 00 - Product Requirements.
- e. Stipulated Price Change Order: Based on Notice of Change and Contractor's estimated price quotation or Contractor's request for Change Order as approved by Engineer.
- f. Unit Price Change Order: For Contract unit prices and quantities, the Change Order will be executed on fixed unit price basis. For unit costs or quantities of units of Work which are not pre-determined, execute Work under Work Directive Change. Changes in Contract Price or Contract Time will be computed as specified for Change Order.
- g. Work Directive Change: Engineer may issue directive, on EJCDC 1910-8-F Work Directive Change signed by Owner, instructing Contractor to proceed with change in the Work, for subsequent inclusion in a Change Order. Document will describe changes in the Work, and designate method of determining any change in Contract Price or Contract Time. Promptly execute change.
- h. Execution of Change Orders: Engineer will issue Change Orders for signatures of parties as provided in Conditions of the Contract.
- i. Correlation Of Contractor Submittals:
 - 1. Promptly revise Schedule of Values and Application for Payment forms to record each authorized Change Order as separate line item and adjust Contract Price.
 - 2. Promptly revise progress schedules to reflect change in Contract Time, revise sub-schedules to adjust times for other items of Work affected by the change, and resubmit.
 - 3. Promptly enter changes in Project record documents.

VI. AS-BUILT PLAN AND PROFILE DRAWINGS

- a. The contractor shall provide one set of as-built plan and profiles drawings for each street in the project. The as-built drawings shall be prepared as follows:
 - 1. The base drawings shall be the sheets as originally provided by the City with the contract documents, including any addendum's that added or modified previously published sheets. Once the as-built drawings are approved by the City, the contractor shall provide the approved version on mylar as well as electronically via DVD.
 - 2. The as-built drawings shall reflect the as-built locations, grades, and elevations of the infrastructure that constructed for the project.
 - 3. The as-built data shall be noted by crossing out the proposed locations, grades, and elevations, and by neatly writing the as-built information. The legibility of the as-built annotations is of extreme importance, any as-built drawings that contain illegible or ambiguous information or data, at the sole discretion of the City staff, shall be rejected.

VII. PRE-BID CONFERENCE

- a. A Pre-Bid conference will be held virtually via Zoom meeting at 3:00 P.M., Thursday August 27, 2020, for which the link will be provided 24 hours in advance on the project webpage: <https://durhamnc.gov/4256/2021-Petition-Streets-ST-286>.
- b. Representatives of the City of Durham, Project Manager, and the Department of E&I will be present to discuss the Project. Bidders are encouraged to attend the conference, though attendance is not mandatory. Project Manager will transmit via screen-sharing to all prospective Bidders in attendance of record such agenda as Project Manager considers necessary in response to questions arising from the conference. Oral statements may not be relied upon and shall not be binding or legally effective.
- c. Bidder questions pertaining to the Work and UBE participation will be addressed at the pre-Bid conference. Bidders may also identify potential UBE Subcontractors at the pre-Bid conference.

VIII. OPENING OF BIDS

- a. Bids shall be opened, unless obviously non-responsive, at the time and place indicated in the Advertisement or Invitation to Bid and read aloud publicly. In observance of social distancing guidelines, the bid opening will be conducted via Zoom meeting at City Hall and bidders are prohibited from being physically present. Bids will be collected either by password protected PDF emailed to Erik.Adkins@durhamnc.gov or hand delivered by the pull off area on Mangum Street within the thirty minutes prior to the bid opening. Passwords for protected PDF bids shall be provided within the thirty minutes prior to the bid opening. See the figure below for physical drop off location.



- b. POSTAL AND FAX DELIVERY OF BIDS WILL NOT BE ACCEPTED.
- c. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.
- d. Bidders may attend the opening of Bids via Zoom meeting posted 24 hours in advance on the project web page: <https://durhamnc.gov/4256/2021-Petition-Streets-ST-286>.

IX. CITY COUNCIL WORK SESSION

- a. The successful bidder may be asked to attend the City Council Work Session where the contract ST-286 is being presented. City Council has been asking contractors to defend their workforce diversity, among other topics, in these sessions. While attendance at these meetings is not required, it is recommended the successful bidder participate to further secure the approval of the contract by City Council.