



Agenda

Greenville City Council

May 5, 2025

6:00 PM

City Hall Council Chambers, 200 West 5th Street

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

- I. Call Meeting To Order**
- II. Invocation - Council Member Matthew Scully**
- III. Pledge of Allegiance**
- IV. Roll Call**
- V. Approval of Agenda**
- VI. Public Comment Period**

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

VII. Consent Agenda

- 1. Resolution and Interlocal Agreement with the City of Kinston, NC, for Code Enforcement Staff Training
- 2. Municipal Agreement with the North Carolina Department of Transportation for the

Community Center Pathway Project

3. Municipal Agreement with the North Carolina Department of Transportation for the Arlington Boulevard Sidewalk Project
4. Municipal Agreements with the North Carolina Department of Transportation for Betterments and Landscape Maintenance Associated with the NCDOT Allen Road Improvement Project
5. Resolution authorizing the filing of an application to the North Carolina Department of Transportation Integrated Mobility Division for the Multimodal Planning Grant Program and Delegation of Authority to Submit Assurances and Execute Grant Agreement.
6. Second Amendment to the Management Agreement Between the City of Greenville and Indigo Sports, LLC for Management of Bradford Creek Public Golf Course
7. Resolution Approving a Lease Agreement with U.S. Bank Equipment Finance for Cardio Exercise Equipment for the Greenville Aquatics and Fitness Center
8. Request to Purchase New Additional Equipment for the Public Works Sanitation Division
9. Contract Award for the 2025 Stormwater Repairs Project and Approval of Task Order #9 for Construction Engineering and Inspection (CEI) and Construction Materials Testing (CMT) On-Call Contract
10. Contract with Cherry Bekaert, LLP for Auditing Services for Fiscal Year 2024-2025
11. Various Tax Refunds Greater Than \$100

VIII. New Business

12. Construction Contract Award to Trader Construction Company for the Town Common Bulkhead and Esplanade Project
13. Professional Services Contract Award to Moffatt & Nichol for Task Order #3 for Construction Administration Services Related to the Town Common Bulkhead and Esplanade Project
14. Professional Services Contract Award for Design, Easement Acquisition, and Construction Administration Services on the Drainage Improvements and Stream Restoration at East Firetower Road Project and Resolution Authorizing the Execution of Grant Agreement and Assurances with the North Carolina Department of Public Safety Disaster Relief and Mitigation Fund
15. Authorization to Extend Sewer Services By Greenville Utilities Commission to the Proposed Pitt County Megasite Property Without Requiring a Petition for Voluntary Annexation
16. Resolution to Authorize City Manager to Accept Donation of Real Property Located at 0

E Fire Tower Rd., Winterville, NC, 28590, Further Described as Tax Parcel 84009, to the City of Greenville from Lewis Land Development, LLC

17. Presentation of the City of Greenville Fiscal Year 2025-2026 Proposed Budget

18. Budget Ordinance Amendment #10 Amending the 2024-25 City of Greenville Budget (Ordinance #24-038), Facilities Improvement Fund (Ordinance #24-038), Recreation & Parks Capital Projects Fund (Ordinance #17-024), IT Capital Projects Fund (Ordinance #17-024), Capital Reserve Fund (Ordinance #24-038), Enterprise Capital Projects Fund (Ordinance #17-024), Public Works Capital Projects Fund (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-018), and Special Revenue Grant Fund (Ordinance #11-003).

IX. Review of May 8, 2025, City Council Agenda

X. City Manager's Report

XI. Comments from Mayor and City Council

XII. Adjournment



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Resolution and Interlocal Agreement with the City of Kinston, NC, for Code Enforcement Staff Training

Explanation: The City of Kinston, NC, has requested assistance with training its newly hired Code Enforcement Officer.

The attached Resolution and Interlocal Agreement provide the guidelines for one-on-one training by a Greenville certified Code Enforcement Officer with the newly hired Kinston Code Enforcement Officer. Training services will be provided at least two (2) days per week for at least four (4) hours per day. In addition, the agreement term will commence upon Council approval and terminate June 30, 2025, and may be extended upon mutual written agreement by both city managers. It may also be terminated by either party by providing at least ten (10) days written notice to the other party.

Also attached is the City of Kinston's Workers Compensation Third Party Administration Agreement documentation that will cover their employee.

The City of Kinston City Council unanimously approved the Resolution (Interlocal Agreement) at its April 15, 2025 meeting.

Fiscal Note: No fiscal impact.

Recommendation: Approve the attached Resolution and Interlocal Agreement provided by the City of Kinston, NC, and authorize the City Manager to execute this Interlocal Agreement for staff training as it relates to Code Enforcement.

ATTACHMENTS

- ☐ [Resolution Authorizing An Interlocal Agreement with City of Kinston for Code Enforcement Training](#)
- ☐ [COK signed interlocal agreement code enforcement.pdf](#)
- ☐ [WC_1 signed.pdf](#)

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF GREENVILLE APPROVING AN INTERLOCAL
AGREEMENT WITH THE CITY OF KINSTON TO PROVIDE ZONING CODE
ENFORCEMENT TRAINING**

WHEREAS, the City of Greenville (Greenville) and the City of Kinston (Kinston) recognize the importance of effective and consistent enforcement of local zoning codes to promote orderly development, protect property values, and enhance the quality of life for residents;

WHEREAS, the Greenville is committed to cooperatively aiding the professional development of municipalities in North Carolina effectively enforcing its zoning regulations;

WHEREAS, the Greenville has agreed to assist in the training of Kinston's code enforcement officer ("Trainee") by allowing said Trainee to observe the manner in which Greenville's code enforcement personnel handle day-to-day duties in the course of their code enforcement work within the territorial jurisdiction of Greenville;

WHEREAS, Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes empowers Greenville and Kinston to enter into an interlocal agreement in order to execute an undertaking whereby a unit of local government exercises any power, function, public enterprise, right, privilege, or immunity either jointly with or on behalf of another unit of local government;

WHEREAS, North Carolina General Statute § 160D-1107 authorizes Greenville and Kinston to enter into a mutual assistance agreement relating to one city providing aid to another with respect to code enforcement services; and

WHEREAS, North Carolina General Statute § 160A-461 provides that an interlocal agreement shall be ratified by resolution of the governing body of each entity spread upon its minutes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that the Interlocal Agreement by and between the City of Greenville and the City of Kinston is hereby ratified, said Agreement relating to the City of Greenville providing code enforcement training to the City of Kinston.

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the City Manager be and is hereby authorized to negotiate and/or execute any documents necessary for carrying out the purpose of this Agreement.

Adopted this the _____ day of _____, 2025.

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

SEAL

**NORTH CAROLINA
LENOIR COUNTY**

**INTERLOCAL
AGREEMENT**

THIS AGREEMENT, made and entered into this the 26th day of March, 2025, by and between the City of Greenville, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina, Party of the First Part and hereinafter referred to as GREENVILLE, and the City of Kinston, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina, Party of the Second Part and hereinafter referred to as KINSTON;

WITNESSETH:

WHEREAS, GREENVILLE has agreed to assist in the training of KINSTON's code enforcement officer ("Trainee") by allowing said Trainee to observe the manner in which GREENVILLE's code enforcement personnel handle day-to-day duties in the course of their code enforcement work within the territorial jurisdiction of GREENVILLE;

WHEREAS, North Carolina General Statute 160D-1107 authorizes GREENVILLE and KINSTON to enter into mutual assistance agreements relating to one city providing aid to another with respect to code enforcement services; and

WHEREAS, Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes empowers GREENVILLE and KINSTON to enter into an interlocal agreement in order to execute an undertaking whereby a unit of local government exercises any power, function, public enterprise, right, privilege, or immunity either jointly with or on behalf of another unit of local government;

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants, and promises contained herein, the parties hereto agree as follows:

1. In accordance with the terms and conditions of this Agreement, GREENVILLE will allow KINSTON'S Trainee to accompany one or more of GREENVILLE'S experienced Code Enforcement Officers in order to provide Trainee with experience in rendering code enforcement

services within the territorial jurisdiction of GREENVILLE, said code enforcement officer (whether one or more collectively being hereinafter referred to as the "Assisting Officer"). The Assisting Officer shall be an active member of the North Carolina Association of Housing Code Officials. The training services will be provided at least two (2) days per each week for at least four (4) hours per day during the term of this Agreement on a schedule mutually agreed upon by GREENVILLE and KINSTON.

2. KINSTON will pay any reasonable expenses incurred by GREENVILLE for the provision of inspection training services within the territorial jurisdiction of GREENVILLE by the Assisting Officer. KINSTON will pay all expenses (salary, commuting, etc.) related to the services of the Trainee. The reimbursement of GREENVILLE for expenses incurred is the full compensation which KINSTON will pay GREENVILLE for the provision of inspection training services by the Assisting Officer. Payment will be made within thirty (30) days after receipt of an invoice therefor.

3. While observing and receiving code enforcement training services within the territorial jurisdiction of GREENVILLE, the Trainee shall be subject to the supervision of the Code Enforcement Supervisor of GREENVILLE and the Assisting Officer.

4. It is understood and agreed that at all times, the Assisting Officer is an employee of GREENVILLE and is not an employee of KINSTON. The Assisting Officer shall not receive any employee benefits from KINSTON.

5. GREENVILLE shall ensure that the Assisting Officer is covered, during the time the Assisting Officer is providing inspection training services within the territorial jurisdiction of GREENVILLE, by workers' compensation insurance and such other benefits which GREENVILLE regularly provides to its employees pursuant to its policies.

6. GREENVILLE will allow the Trainee to accompany the Assisting Officer in the Assisting Officer's City vehicle while the Assisting Officer is conducting inspection training services within the territorial jurisdiction of GREENVILLE. KINSTON will be responsible for

providing the Trainee any commuting expense to and from the territorial jurisdiction of GREENVILLE.

7. KINSTON will hold harmless and indemnify GREENVILLE for any claims or damages, other than workers compensation related claims, resulting from the provision of inspection training services within the territorial jurisdiction of GREENVILLE by the Assisting Officer which are within the scope of the authority of the Assisting Officer. KINSTON has provided Greenville with appropriate certificates of insurance to evidence coverages for Worker's Compensation and General Liability.

8. The term of this Agreement shall be for a period commencing upon the execution hereof by both parties, and terminating on June 30, 2025, unless sooner terminated pursuant to the provisions of paragraph 9. This Agreement may be extended upon mutual written agreement of the city managers of KINSTON and GREENVILLE.

9. This Agreement may be terminated by mutual agreement of the parties or by either party, at any time, by the provision of at least ten (10) days written notice to the other party. KINSTON will reimburse GREENVILLE for all expenses reasonably incurred prior to the effective date of termination.

10. All notices, approvals, consents, requests or demands required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficiently given when deposited in the mail, first-class postage prepaid, and addressed to the respective parties as follows:

GREENVILLE:
City Manager
City of Greenville
P.O. Box 7207
Greenville, NC 27835

KINSTON:
City Manager
City of Kinston
P.O. Box 339
Kinston, NC 28502

or to such other addresses as either party shall subsequently designate by notice given in accordance with this section.

11. This Agreement constitutes the entire understanding of the parties.

12. This Agreement shall be binding upon the successors and assigns of the parties.

13. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of this Agreement.

14. This Agreement shall not be modified or otherwise amended except in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in duplicate originals, as of the day and year first above written, all pursuant to authority duly granted.

[signatures follow on next page]

CITY OF GREENVILLE

By: _____
Michael Cowin, City Manager

APPROVED AS TO FORM:

City Attorney, City of Greenville

PRE-AUDIT CERTIFICATION

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

Finance Director, City of Greenville

CITY OF KINSTON

By: Rhonda Barwick
Rhonda Barwick, City Manager

APPROVED AS TO FORM:

[Signature]
City Attorney, City of Kinston

PRE-AUDIT CERTIFICATION

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

Donna H. Greckon
Finance Director, City of Kinston

**AGREEMENT FOR
THIRD PARTY ADMINISTRATION SERVICES
FOR WORKERS' COMPENSATION CLAIMS
CITY OF KINSTON**

This Agreement is made and entered into as of the 1st day of July, 2023 (the "Effective Date") by and between the North Carolina League of Municipalities, an unincorporated association ("League") and the City of Kinston, a municipal corporation of the State of North Carolina ("City").

WITNESSETH

WHEREAS, City desires to procure an independent contractor to perform third party administration services for workers' compensation claims; and

WHEREAS, City has completed all necessary steps for selecting professional and other services under applicable City policies; and

WHEREAS, City has agreed to engage League and League has agreed to contract with City, for the performance of services as described herein in accordance with the terms and conditions set forth.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, League and City do contract and agree as follows:

1. SCOPE OF SERVICES

League agrees to provide the claims review and administration services set forth in Exhibit A, entitled "Scope of Services," which is attached hereto and incorporated into and made a part of this Agreement by reference.

2. TIME FOR PERFORMANCE

The term of this Agreement shall begin on the Effective Date and, unless sooner terminated in accordance with the terms hereof, shall exist and continue until June 30, 2026.

3. COMPENSATION

Compensation to be paid to League by City shall be in accordance with the terms set forth in Exhibit B, entitled "Pricing," which is attached hereto and incorporated into and made a part of this Agreement by reference. City shall be invoiced monthly for the claims created during the previous month. Upon receipt of an invoice, City shall pay amounts invoiced within fifteen (15) days after the date of the invoice or contact League's representative herein designated with questions. Upon resolution of any such questions, City shall make appropriate payment to League within fifteen (15) days thereafter.

4. QUALITY OF SERVICES

All services performed under this Agreement shall be performed in a professional manner to the reasonable satisfaction of City and shall conform to all prevailing industry and professional standards for third party administrator services for workers' compensation claims.

5. CLAIM PAYMENTS

For each calendar month during the Agreement term, City will transfer to League certain funds for use in payment of accepted claims against City. The funds transferred to League by City will be in an amount commensurate to approximately thirty (30) calendar days of projected claim payments. In addition, in any case in which claim payments made on behalf of City appear to be projected to exceed the initial funding transferred to League, League will notify City and request additional funding for the remainder of the month. League will acknowledge receipt of these funds as well as its obligation to return unused funds to City in accordance with the provisions of this Agreement.

If a surplus of funds remains after all claim payments have been credited against a monthly fund transfer, such surplus will be held by League to cover shortfalls in claim payment funds which may arise in succeeding months. League will be required to maintain an accounting of all fund transfers, claim payments, and surpluses. City agrees that any deficiency in funds availability during any calendar month shall be due and payable not later than fifteen (15) days from the date of invoicing from League. Reconciliation of these fund transfers and claim payments, if necessary, will occur at the conclusion of each Agreement term. League shall, within fifteen (15) days after reconciliation, return any excess funds to City, provided that excess funds shall be only those funds remaining after offset of: (1) the amount against any un-reimbursed claim payments; and (2) any funds held in reserve for open claims.

The payment of any loss settlement in excess of \$25,000 will require City's approval and pre-funding by City within three (3) business days of League's notice to City.

Upon receipt of an invoice, City shall pay amounts invoiced within fifteen (15) days after the date of the invoice or contact League's representative herein designated with questions. Upon resolution of any such questions, City shall make appropriate payment to League within fifteen (15) days thereafter.

6. SETTLEMENT AUTHORITY

Pursuant to the terms of this Agreement, City delegates and hereby relinquishes full and complete authority and control to League for all matters pertaining to the handling of claims within League's discretionary settlement authority limit under this Agreement as set forth in Item IX of Exhibit C. League shall, in connection with such claims, comply with all applicable federal, State or local laws in the evaluation and adjustment of assigned claims or the subject matter thereof, and shall exercise its independent judgment unless City specifically advises otherwise. City reserves the right to take over the handling and control of any claim at any time for any reason.

City represents and warrants that any settlement requiring the prior approval of City as specified herein shall be, when so approved, the duly authorized act of City, and that the representative of City providing such approval shall be authorized to do so on behalf of City.

7. SUSPENSION OR TERMINATION

7.1 Default. In the event that League's performance shows non-conformance to the work required by this Agreement, the Scope of Services or other terms or conditions contained herein as a result of League's errors, omissions or negligent acts, League shall be in breach of this Agreement and City may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

7.2 Suspension. In the event that League's performance is found by City to be deficient under the Agreement, City shall also have the right to suspend the Agreement upon ten (10) days written notice to League. Such written notice shall state the reasons for suspension and allow for a review period of ten

(10) days during which League shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by City. If, in the opinion of City, League remains in violation of the Agreement at the completion of the ten (10) day suspension period, City shall have the right to terminate the Agreement, whereupon all obligations of City to League shall cease. If, following a suspension, City elects to resume performance under the Agreement, such resumption of performance shall not constitute waiver of any rights or claims of City hereunder.

7.3 Post Termination Responsibilities. If this Agreement is terminated for any reason, unless otherwise agreed in writing at that time, as of the date of termination League will not accept any new claim files from City and will otherwise terminate all work under this Agreement, except that League will complete the adjustment of claim files previously received by it for which the fees specified in Exhibit B have been paid, until such time as the file is closed or ten (10) years from the date of injury, whichever occurs first. City shall continue to be legally and financially responsible for and shall fund all medical and indemnity payments under such files as League shall continue to adjust.

7.4 Other Remedies. Nothing contained herein shall prevent City from pursuing any other remedy that it may have against League, including claims for damages.

7.5 Data Access Upon Termination. Upon expiration, termination or default of this Agreement, League will provide City or its authorized agent access to all electronic data files that need to be transferred to another software system.

8. INDEMNIFICATION

League shall not be liable for any claims, damages, losses, costs, charges, fees, interest or expenses of whatever kind (including punitive damages, court costs and attorneys' fees) arising out of any incident, occasion or claim made against City for which services are provided hereunder. To the extent allowed by North Carolina law, City shall indemnify and hold harmless League from all liability, costs and legal fees arising out of any incident, occasion or claim made against City for which services are provided hereunder.

League shall indemnify, defend and hold harmless City with respect to any claims or demands, actions, damages, costs and expenses resulting from any errors, omissions, torts or other negligent acts or omissions of League, its agents, servants, employees, associates or subcontractors; provided however, that the foregoing hold harmless provision shall have no force and effect with respect to any such claims or demands, actions, damages, costs and expenses which are the result of the instructions or acts of City, or are the result of League's non-negligent fulfillment of its obligations under this Agreement.

The parties understand and acknowledge that no North Carolina case, statute or Constitutional provision authorizes a local government to indemnify a contractor, and that the foregoing provisions in this Section may be unenforceable.

9. NON-EMPLOYMENT COVENANT

During the period of this Agreement and any renewals or extensions thereof, and for a period of two (2) years thereafter, League agrees not to solicit for employment, or employ any City employees who provided any services or work within the scope of services contemplated by this Agreement; and City agrees not to solicit for employment, or employ during the period of this Agreement and any renewals or extensions thereof, and for a period of two (2) years thereafter, any employee of League who provided any services or work within the scope of services contemplated by this Agreement.

10. NON-APPROPRIATION

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from City are from appropriations and monies from its governing body and any other governmental entities. In the event sufficient appropriations or monies are not made available to City to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of City. In the event of such non appropriation, notice thereof shall be immediately provided by City to League.

11. NOTICES

All notices, requests for payment or other communications arising hereunder shall be, until notice of a change is given to the other party in accordance with the provisions of this section, sent or directed to the following:

City
Rhonda Barwick
City Manager
Telephone: (252)939-3111
207 E King St.
Kinston, NC 28501

League
Thelma Holt
Workers' Compensation Claims Manager
Telephone: (919)715-8997
434 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601

12. NON-DISCRIMINATION

With respect to the subject matter of, and all work to be performed under this Agreement, it is specifically agreed that League, its agents, officials, employees and servants agree not to discriminate in any manner on the basis of age, sex, sexual orientation, handicap, race, color, creed or national origin with reference to the subject matter of this Agreement, no matter how remote.

13. ACCESS TO DATA/FILES

League shall have a duty to maintain records and files in a format and via a system that is easily accessible to City and to ensure and support City's ability to access and analyze claim information efficiently.

14. ASSIGNMENT

This Agreement may not be assigned by League without the express written consent of City.

15. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the applicable laws of the State of North Carolina, and venue for any legal actions shall be in Lenoir County Superior Court.

16. ENTIRE AGREEMENT

This instrument, together with the following documents incorporated herein by reference, constitute the whole and entire agreement between the parties and supersede all prior oral and written statements or agreements. Those documents specifically incorporated herein by reference as if fully set forth herein are:

- | | | |
|------|-----------|-------------------------------|
| i. | Exhibit A | Scope of Services |
| ii. | Exhibit B | Pricing |
| iii. | Exhibit C | Checklist for Claims Handling |

This instrument may be altered only by a subsequent mutual agreement that is reduced to writing and is executed by authorized legal representatives of both parties.

The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this Agreement and the requirements of applicable law.

17. AUTHORITY

League and City, each to the other, represent and warrant that each has full authority to enter into this Agreement and that each has obtained all necessary consents in connection with execution and delivery thereof. This Agreement constitutes the valid and legally binding obligation of each party, enforceable in accordance with its terms. The person or persons executing this Agreement on behalf of the parties are duly authorized to do so.

18. COMPLIANCE WITH E-VERIFY

The parties shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if League utilizes a subcontractor, League shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

19. IRAN DIVESTMENT ACT CERTIFICATION

League certifies that, as of the date hereof, it is not on the Final Divestment List as created by the North Carolina State Treasurer pursuant to § 147-86.55 et. seq. of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act, League shall not utilize in the performance of this Agreement any subcontractor that is identified on the Final Divestment List.

20. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, City and League have executed the foregoing Agreement as of the date and year first above written.

City of Kingston:

NC League of Municipalities:

Rhonda Barwick, City Manager

Rose Vaughn Williams, Executive Director

Shadi Danesh
Signature

Signature

Attest:

DEBRA THOMPSON, CITY CLERK
Print Name and Title

Print Name and Title

Signature

Affix Seal:

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

Worm London
(Signature of Finance Officer)

(Signature of Finance Officer)

EXHIBIT A

SCOPE OF SERVICES

This Exhibit A "Scope of Services" is hereby made a part of that Agreement for Third Party Administration Services for Workers' Compensation Claims between the North Carolina League of Municipalities ("League") and the City of Kinston ("City") dated as of July 1, 2023 ("Agreement").

League agrees:

1. To accept and review all claims and loss reports reported to it by the city. The City will report claims via telephone to (919)715-1629, or via fax to (919)715-8465, or by e-mail to claimssadmin@ncdm.org.
2. To review all existing workers' compensation claim files and identify files that are closable and to continue to perform necessary services to process active claims to conclusion.
3. To perform all administrative tasks that are required to properly close out the files that have been identified as closable. This may include, but is not limited to, the following types of tasks:
 - a. Establishing criteria for closing claims;
 - b. Identifying appropriate state forms to close claims;
 - c. Developing employee communication plans (i.e., letters to claimants);
 - d. Coordinating action plans with appropriate City staff;
 - e. Preparing documentation for the North Carolina Industrial Commission;
 - f. Remitting checks to appropriate authorities; and
 - g. Providing City with a detailed listing of open and closed claims.
4. To investigate accepted claims and losses to the extent deemed necessary in the independent judgment of League, and to adjust, settle, deny or otherwise handle all such claims within the authority granted by City. League shall have the authority to settle and close all claims, including permanent partial disability ratings. Any Compromise Settlement and Release (Clincher) agreement must be coordinated with and approved by City.
5. To identify subrogation rights and parties, and take all reasonable actions to seek appropriate reimbursement on City's behalf. To engage professional assistance from attorneys, necessary experts and the like to assist in pursuing subrogation payment with prior approval from City, and at City's cost.
6. To provide investigatory assistance on a time and expense basis to City.
7. To establish claim and/or loss files for all accepted claims and losses which shall be available for review at all reasonable times by City.
8. To maintain thorough documentation of all claims, including, but not limited to, correspondence, investigatory materials, medical records, invoices, memoranda and other documents. League also agrees to generate and maintain notes of all claim activity in a manner to facilitate efficient access to this information by City.
9. To provide, during the term of the Agreement, a designated customer service representative at its Raleigh, North Carolina office. The customer service representative will act as a liaison and coordinate

services between City and League. If at such time City no longer has an unexpired Agreement with League, the services of a customer service representative may continue to be provided upon City's request, for an additional, negotiated fee.

10. To comply with Item VIII of Exhibit C concerning reinsurance claims. League shall report all such claims to City's excess workers' compensation insurance carrier(s), and shall comply with any other reporting requirements, including the use of necessary forms and other documents required by the excess workers' compensation carrier(s). City will supply names, addresses and contact persons affiliated with such excess carrier(s) as may be required by League to fulfill this reporting requirement.

11. To engage professional assistance from attorneys, necessary experts, and the like only after having obtained prior approval from City, and at City's expense. League will engage a pharmacy benefit manager, private provider network and fee schedule re-pricing vendor for the use and benefit of City with prior approval from City, and at City's expense. League will engage rehabilitation case management experts and private detectives from a list of vendors pre-approved by City. League will discuss the need for a medical second opinion with City staff prior to engagement of same.

12. To provide at each month's end the following:

- a. A billing report for services;
- b. A billing for reimbursement of claims payments;
- c. An e-mailed monthly report of all open and closed claims, to include the status of each open claim assigned, including details of payment and outstanding reserves for the month and year covered by the report; such report to be provided no later than the 15th day of the following month;
- d. Documentation of payments made on City's behalf in a form acceptable to City; and
- e. Read-only access to cumulative claim information contained in League's claims system via a remote access technology solution.

13. To handle to conclusion or return to City at City's option, claims existing at the termination of this Agreement.

EXHIBIT B

PRICING

This Exhibit B "Pricing" is hereby made a part of that Agreement for Third Party Administration Services for Workers' Compensation Claims between the North Carolina League of Municipalities ("League") and the City of Kinston ("City") dated as of July 1, 2023 ("Agreement").

Workers' Compensation review claim fees are as follows:

1. Fee Per claim

Medical Only Claims - \$198 per claim (does not include lost time in excess of seven (7) days).

**Workers' Compensation Claims - \$ 1,200 per claim (Indemnity Payments, TTD, PPD).
Pricing is for life of a claim, not to exceed 10 years.**

2. Time and Expense (actual time spent)

\$78.00 per hour plus expenses incurred

All claims referred to City that may require additional investigation time or testimony as required by City will be billed to City on a time and expense basis of \$ 78.00 per hour. In addition, this hourly rate will also apply to the following claims:

- a. All claims as listed in Item VIII of Exhibit C;**
- b. All claims with a reserve equal to or greater than City's self-insured retention;**
- c. Attendance at Mediations, Arbitrations or Hearings;**
- d. Special Assistance required of League Information Technology Department;**
- e. Incident only \$ 78.00/incident;**
- f. Subrogation efforts after workers compensation file has been concluded.**

EXHIBIT C

CHECKLIST FOR CLAIMS HANDLING

This Exhibit C "Checklist for Claims Handling" is hereby made a part of that Agreement for Third Party Administration Services for Workers' Compensation Claims between the North Carolina League of Municipalities ("League") and the City of Kinston ("City") dated as of July 1, 2023 ("Agreement").

I. Medical Treatment:

Mainstreet Family Care and FastMed are the authorized treating facilities:

FastMed
2908 N Heritage, Kinston NC
(252)523-3111

Mainstreet Family Care
1040 US HWY 258 N, Kinston NC
(252) 525-4000

Authorized medical treatment is paid up to the date of denial. Medical Authorization forms and/or requests for additional treatment/referrals will be faxed to League for authorization. If there is no claim, City will provide the claim information before authorization can be given. Claim may need investigation prior to any authorization.

II. Prompt Contact/Investigation

Contact shall be made with Employee and Employer within 24 hours of receiving Lost Time assignment. The Employee and Employer Interview Summary form in Intelligent Voice Operating System ("IVOS") Correspondence shall be completed.

Recorded statements shall be obtained on claims with lost time that involve back, neck, hernia or if they are determined to be questionable based upon the independent judgment of City or League, and on all questionable medical only claims, or as directed by a City or League Supervisor. The recorded interview guidelines form in IVOS Correspondence shall be completed.

If unable to make contact within 24 hours, document IVOS Notepad to reflect attempts and make sure contact letter and medical release form have been mailed.

III. Compensability

City and League shall abide by §97-18(j) of the North Carolina General Statutes, which states:

"The employer or insurer shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in subsections (b), (c) or (d) of this section. When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against an employer or insurer which does not, within 30 days following notice from the Commission of the filing of a claim, or within such reasonable additional time as the Commission may allow, do one of the following:

(1) Notify the Commission and the employee in writing that it is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under subsection (b) of this section.

(2) Notify the Commission and the employee that it denies the employee's right to compensation consistent with subsection (c) of this section.

(3) Initiate payments without prejudice and without liability and satisfy the requirements of subsection (d) of this section."

Before denying any claim, League shall contact City to discuss the claim.

IV. Reserves

It is the philosophy of League that all files should be reserved out of respect of the injury or damage. The reserve should reflect the ultimate lifetime settlement value of the claim, taking into account the liability and defenses available that may influence the ultimate value of the case. The final reserve should be achieved usually within 180 days of the initial creation of the claim file, taking care to avoid frequent increases (or stair-stepping as it is sometimes called). A reserve should be adequate for the life of the claim, with reserve increases only based on the development of substantial new information that would impact the value of the case (i.e., injury worsens, surgery is required, employee does not recover from the injury timely, cannot return to work, etc.)

Initial reserves are set by League Claims Supervisors on new lost-time claims; after the claim investigation is completed, the reserves are to be adjusted accordingly. Document reserve changes on the reserve worksheet along with reasons. For reserve increases that exceed a total reserve of \$100,000, Management must sign off on reserve worksheet.

Medical only claims shall have a standard reserve set automatically at \$1,500.

Med-Pay claims shall be reserved at \$800.

V. Payments

City and League shall abide by 997-18(g) of the North Carolina General Statutes, which states:

"If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment."

City and League shall abide by Rule 407(2) of the North Carolina Industrial Commission Rules, which states:

"If any bill for medical compensation services is not paid within 60 days after it has been approved by the Industrial Commission and returned to the responsible party, or, when the employee is receiving treatment through a managed care organization, within 60 days after the bill has been properly submitted to an insurer or managed care organization, there shall be added to such unpaid bill an amount equal to 10%, which shall be paid at the same time as, but in addition to, such bill, unless late payment is excused by the Industrial Commission."

VI. Subrogation

Subrogation is to be determined at onset of claim and the necessary actions are to be taken to protect any lien. League will document third party/subrogation information in League's claims processing system.

Files that remain open for subrogation purposes only will be reassigned to a Subrogation Specialist to continue recovery efforts. This will be billed at time and expense.

VII. Vendor Authority

Lost Time Adjusters have the authority to assign outside vendors that have completed the appropriate service agreement and have been pre-approved by City.

Medical Only Adjusters must obtain authority from League Claims Management to assign outside vendors.

Surveillance authority is limited to \$1,800.

City retains the right to assign outside defense counsel.

VIII. Reinsurance Reporting

City claims will be reported to their excess carrier when the reserve is at least half the self-insured retention (SIR) or it meets one of the criteria listed below:

The following types of claims MUST be reported to Excess Carrier regardless of reserves:

- (1) All fatalities;
- (2) All serious spinal cord injuries, i.e., paraplegia;
- (3) All paralysis cases;
- (4) All major amputation cases;
- (5) All major brain damage cases;
- (6) All major burns/disfigurement cases;
- (7) All major heart attack cases; and
- (8) Any Employer Liability Claim.

IX. Settlement Authority

League shall have settlement authority up to \$1,000 above the permanent partial impairment rating; all indemnity settlements will be discussed with City prior to settlement.

X. Mediation

City Attorney's office will schedule all mediations unless outside defense counsel has been retained by City. Adjuster will bill time and expense for attendance at mediation. Telephone standby for Adjusters at mediations and attendance will only be required at the request of the City, City Attorney's Office, or in the absence of consent to telephone standby by all the parties to the mediation.

XI. Hearings

City Attorney or City Attorney's designee will attend all hearings unless outside defense counsel has been retained by City. Adjuster will bill time and expense for attendance at hearing. Absent an appearance pursuant to a subpoena, adjusters shall only attend hearings at the request of the City or City Attorney's Office.

XII. Supervision

Management will review files at their discretion.

XIII. Activity Notes

Activity notes should outline claim and should be updated regularly. They should include an action plan and should reflect communications with Members, Outside Vendors, Review of Medical records, etc.



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Municipal Agreement with the North Carolina Department of Transportation for the Community Center Pathway Project
<u>Explanation:</u>	<p>The Community Center Pathway Project seeks to provide a pedestrian pathway from the north side of Eppes Recreation Center (ERC) to the signalized pedestrian crossing at Memorial Drive and 3rd Street. This will provide a safe pedestrian connection between the ERC and the Moyewood neighborhood. Improvements will include new 5'-6' wide sidewalks, a 10' wide multi-use path between 4th and 3rd Streets utilizing unimproved City right-of-way, and roadway lighting on wood poles.</p> <p>Through the Greenville Urban Area Metropolitan Planning Organization, staff was able to secure funding for the project from the NC Office of Strategic Initiatives and Program Support-Carbon Reduction Program. This funding provides 80% of anticipated project costs and requires a 20% local match.</p> <p>Execution of a municipal agreement with the North Carolina Department of Transportation is required to receive these funds. A copy of the municipal agreement is included as Attachment 1.</p>
<u>Fiscal Note:</u>	The City's 20% cost share is anticipated to be \$66,000 and will be funded by the General Fund.
<u>Recommendation:</u>	City Council approve the municipal agreement with NCDOT to fund the Community Center Pathway Project and the City's associated match in the amount of \$66,000.

ATTACHMENTS

- ☐ [Community Center Pathway MA with NCDOT.pdf](#)

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: City of Greenville

County: Pitt

TIP: BL-0155

Project: Greenville Community Center multi use path

Scope: Construction of Greenville Community Center multi use path, including installation of roadway lighting, from 4th Street to 3rd Street along south side of 3rd Street to Memorial Drive.

Eligible Activities:

PE	51705.1.1	Design
		Environmental
ROW	51705.2.1	ROW Acquisition
UTIL	51705.2.2	Utility
CON	51705.3.1	Construction
OTHER	51705.2.2	Utilities
FEDERAL-AID	5170501	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Carbon Reduction Plan (CRP)	\$264,000	80 %	\$66,000	20 %
Total Available Funding		\$330,000		

Responsibility: The City of Greenville shall be responsible for all aspects of the project.

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -
FEDERAL**

PITT COUNTY

DATE: 4/4/2025

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: BL-0155

AND

WBS Elements: PE 51705.1.1

ROW 51705.2.1

UTIL 51705.2.2

CITY OF GREENVILLE

CON 51705.3.1

OTHER FUNDING: 51705.2.2

FEDERAL-AID NUMBER:

CFDA #: 20.205

Total Funds [NCDOT Participation] \$264,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the City of Greenville, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Infrastructure Investment and Jobs Act (IIJA) allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Greenville Community Center multi use path, hereinafter referred to as the Project, in Pitt County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$264,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved State Transportation Improvement Program (STIP) for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of Construction of Greenville Community Center multi use path, including installation of roadway lighting, from 4th street to 3rd street along south side of 3rd street to Memorial Drive

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Carbon Reduction Program, (CRP). The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Two Hundred Sixty Four Thousand Dollars (\$264,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
OTHER	\$264,000	80%	\$66,000	20%
Total Available Funding		\$330,000		

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside, but is not limited to, ten percent (10%) of the total available funding, or \$33,000, to use towards the costs related to review and oversight of this Project. These costs may include but are not limited to: review and approval of plans, environmental documents, contract proposals, and engineering estimates; performance of any phase of work, for example, contract administration or construction engineering and inspection; oversight of any phases; or any other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

4. PERIOD OF PERFORMANCE

COMPLETION DATE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

MILESTONE DATES AND REVISIONS

The Municipality is responsible for regularly updating project milestones throughout the life of the project. If project milestones are near (or have passed without completion) and have not been updated to a realistic schedule by the Municipality, the Department reserves the right to revise the milestones accordingly. Revisions by the Department could lead to milestones being pushed into another fiscal year resulting in a change to the STIP. The Department is not responsible for project delays caused by these milestone revisions.

EXTENDING COMPLETION DATE

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department may allow up to three additional months for submission of final reimbursement package by the Municipality, without entering into a supplemental agreement.

The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64.31; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legisregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The

Municipality shall bear all costs associated with penalties for violations and claims due to delays.

- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at <https://www.ncleg.gov/Laws/GeneralStatutes> and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at <https://www.ncleg.gov/Laws/GeneralStatutes> ; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at <https://www.ncleg.gov/Laws/GeneralStatutes>.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference

<https://connect.ncdot.gov/resources/Specifications/Pages/2024-Specifications-and-Special-Provisions.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legisregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Greenville Community Center multi use path, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the

Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$264,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the

Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality will indemnify and hold harmless the FHWA (if applicable), the Department and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability, including those that may be initiated by third parties, in connection with the Project activities performed pursuant to this Agreement including construction of the Project, except for those claims arising out of the errors, omissions, or negligence of the Department, its respective officers, directors, principals, employees, agents, successors, and assigns.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

COUNTERPARTS AND ELECTRONIC SIGNATURES

- This Agreement, and other documents to be delivered pursuant to this Agreement, may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document and will be effective when counterparts have been signed by each of the Parties. An image of a manual signature on this Agreement, or other documents to be delivered pursuant to this Agreement, will constitute an original signature for all purposes. The delivery of copies of this Agreement or other documents to be delivered pursuant to this Agreement, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Agreement or such other document for all purposes.
- The Parties hereto further acknowledge and agree that this Agreement may be signed and/or transmitted by email or a PDF document or using electronic signature technology (e.g. DocuSign, Adobe Sign, or other electronic signature technology), and that such signed record shall be valid and as effective to bind the Party so signing as a paper copy bearing such Party's handwritten signature. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the electronic signature technology, the Parties consent to be legally bound by the terms and conditions of Agreement and that such act constitutes a signature as if actually signed in writing. The Parties also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The Parties acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the electronic signature

technology, will have the same effect as physical delivery of the paper document bearing an original written signature.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

CITY OF GREENVILLE

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

City of Greenville

Remittance Address:

DEPARTMENT OF TRANSPORTATION

BY: _____

(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____(Date)



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Municipal Agreement with the North Carolina Department of Transportation for the Arlington Boulevard Sidewalk Project
<u>Explanation:</u>	<p>The Arlington Boulevard Sidewalk Project seeks to provide a pedestrian connection along the south side of Arlington Boulevard from Hooker Road to the crosswalk between Evans Park and J. H. Rose High School. This will provide a safe pedestrian connection to the school for students living in or near the Carolina Cove Apartments. Improvements will include new 5'-6' wide sidewalks.</p> <p>Through the Greenville Urban Area Metropolitan Planning Organization, staff was able to secure funding for the project from the NC Office of Strategic Initiatives and Program Support-Carbon Reduction Program. This funding provides 80% of anticipated project costs and requires a 20% local match.</p> <p>Execution of a municipal agreement with the North Carolina Department of Transportation (NCOT) is required to receive these funds. A copy of the municipal agreement is included as Attachment 1.</p>
<u>Fiscal Note:</u>	The City's 20% cost share is anticipated to be \$62,500 and will be funded by the General Fund.
<u>Recommendation:</u>	City Council approve the municipal agreement with NCDOT to fund the Arlington Boulevard Sidewalk Project and the City's associated match in the amount of \$62,500.

ATTACHMENTS

☐ [Attachment 1 - Municipal Agreement with NCDOT for the Arlington Blvd Sidewalk Project.pdf](#)

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: City of Greenville

County: Pitt

TIP: BL-0156

Project: Construct sidewalk

Scope: Constuction of sidewalk from Arlington Boulevard and Hooker Road intersection to Evans Park in Greenville.

Eligible Activities:

PE	51706.1.1	Design
		Environmental
ROW	51706.2.1	ROW Acquisition
UTIL	51706.2.2	Utility
CON	51706.3.1	Construction
OTHER	51706.2.2	
FEDERAL-AID	5170601	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Carbon Reduction Program - CRP	\$250,000	80 %	\$62,500	20 %
Total Available Funding		\$312,500		

Responsibility: The City of Greenville shall be responsible for all aspects of the project.

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -
FEDERAL**

PITT COUNTY

DATE: 4/11/2025

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: BL-0156

AND

WBS Elements: PE 51706.1.1

ROW 51706.2.1

UTIL 51706.2.2

CITY OF GREENVILLE

CON 51706.3.1

OTHER FUNDING: 51706.2.2

FEDERAL-AID NUMBER:

CFDA #: 20.205

Total Funds [NCDOT Participation] \$250,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the City of Greenville, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Infrastructure Investment and Jobs Act (IIJA) allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for construction of sidewalk from Arlington Boulevard and Hooker Road intersection to Evans Park, hereinafter referred to as the Project, in Pitt County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$250,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved State Transportation Improvement Program (STIP) for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of the Construction of sidewalk from Arlington Boulevard and Hooker Road intersection to Evans Park in Greenville.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Carbon Reduction Program - CRP. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Two Hundred Fifty Thousand Dollars (\$250,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Carbon Reduction Program - CRP	\$250,000	80%	\$62,500	20%
Total Available Funding		\$312,500		

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside, but is not limited to, ten percent (10%) of the total available funding, or \$31,250, to use towards the costs related to review and oversight of this Project. These costs may include but are not limited to: review and approval of plans, environmental documents, contract proposals, and engineering estimates; performance of any phase of work, for example, contract administration or construction engineering and inspection; oversight of any phases; or any other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

4. PERIOD OF PERFORMANCE

COMPLETION DATE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

MILESTONE DATES AND REVISIONS

The Municipality is responsible for regularly updating project milestones throughout the life of the project. If project milestones are near (or have passed without completion) and have not been updated to a realistic schedule by the Municipality, the Department reserves the right to revise the

milestones accordingly. Revisions by the Department could lead to milestones being pushed into another fiscal year resulting in a change to the STIP. The Department is not responsible for project delays caused by these milestone revisions.

EXTENDING COMPLETION DATE

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department may allow up to three additional months for submission of final reimbursement package by the Municipality, without entering into a supplemental agreement. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64.31; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for

those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at <https://www.ncleg.gov/Laws/GeneralStatutes> and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10.PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at <https://www.ncleg.gov/Laws/GeneralStatutes> ; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result

of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-

Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at <https://www.ncleg.gov/Laws/GeneralStatutes>.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference

<https://connect.ncdot.gov/resources/Specifications/Pages/2024-Specifications-and-Special-Provisions.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force

account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made

by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Construct sidewalk , or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this

Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

▪ WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

▪ UNSUBSTANTIATED COSTS

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

▪ WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$250,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

▪ CONSTRUCTION ADMINISTRATION

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality will indemnify and hold harmless the FHWA (if applicable), the Department and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability, including those that may be initiated by third parties, in connection with the Project activities performed pursuant to this Agreement including construction of the Project, except for those claims arising out of the errors, omissions, or negligence of the Department, its respective officers, directors, principals, employees, agents, successors, and assigns.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any

expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

COUNTERPARTS AND ELECTRONIC SIGNATURES

- This Agreement, and other documents to be delivered pursuant to this Agreement, may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document and will be effective when counterparts have been signed by each of the Parties. An image of a manual signature on this Agreement, or other documents to be delivered pursuant to this Agreement, will constitute an original signature for all purposes. The delivery of copies of this Agreement or other documents to be delivered pursuant to this Agreement, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Agreement or such other document for all purposes.
- The Parties hereto further acknowledge and agree that this Agreement may be signed and/or transmitted by email or a PDF document or using electronic signature technology (e.g. DocuSign, Adobe Sign, or other electronic signature technology), and that such signed record shall be valid and as effective to bind the Party so signing as a paper copy bearing such Party's handwritten signature. By selecting "I Agree", "I Accept", or other

similar item, button, or icon via use of a keypad, mouse, or other device, as part of the electronic signature technology, the Parties consent to be legally bound by the terms and conditions of Agreement and that such act constitutes a signature as if actually signed in writing. The Parties also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The Parties acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the electronic signature technology, will have the same effect as physical delivery of the paper document bearing an original written signature.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

CITY OF GREENVILLE

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

City of Greenville

Remittance Address:

DEPARTMENT OF TRANSPORTATION

BY: _____

(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____(Date)



City of Greenville, North Carolina

Meeting Date: 05/05/2025

-
- Title of Item:** Municipal Agreements with the North Carolina Department of Transportation for Betterments and Landscape Maintenance Associated with the NCDOT Allen Road Improvement Project
- Explanation:** The North Carolina Department of Transportation (NCDOT) has programmed roadway improvements on SR 1203 (Allen Road) from SR 1467 (Stantonsburg Road) to US 13 (Dickinson Avenue Extension) to widen to multi-lanes. The first municipal agreement for betterments approved in July 2018 included provisions in its construction contract for the construction of approximately 7595 linear feet of sidewalk along the east side and 6705 linear feet of sidewalk along the west side of Allen Road (SR 1203). A second municipal agreement was approved by City Council in March 2019 but, subsequently, was never approved by the Board of Transportation due to construction being delayed. The attached municipal agreement (Attachment 1) includes illuminated street signs as well as black powder coating on the steel signal poles and replaces the one previously approved by City Council. The estimated cost to the City of Greenville is \$33,400.
- An additional municipal agreement (Attachment 2) for maintenance of landscaping along the project corridor is attached for review and approval. At the end of a one (1) year establishment period, the City shall assume responsibility for all maintenance and replacement of the landscape materials. Maintenance shall include, but not be limited to, the following: watering, mulching, pruning, fertilizing, weeding, pest control, mowing, and replacing plant materials. If the City does not perform the necessary maintenance, NCDOT will perform maintenance or shall return the planted area to a natural condition (i.e. seeded and mulched, etc.). It is further agreed that the costs of the restoration shall be reimbursed to NCDOT by the City.
- Fiscal Note:** The City will be invoiced the actual costs of the betterments which is estimated at \$33,400. Reimbursement to NCDOT shall be made in one final payment within 60 days of invoicing and will be paid for from the Capital Improvement Funds. While there are no funds due to NCDOT for the landscape maintenance municipal agreement, there will be an operational increase to the Public Works Department budget.
- Recommendation:** City Council approve the Municipal Agreements with NCDOT for betterments and landscape maintenance along Allen Road.

ATTACHMENTS

- ☐ [Attachment 1 - MA Betterments.pdf](#)
- ☐ [Attachment 2 - MA Landscape Maintenance.pdf](#)

AGREEMENT OVERVIEW

NORTH CAROLINA
PITT COUNTY

DATE: 2/7/2025

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

TIP #: U-5875

WBS ELEMENTS: CON 44677.3.1

AND

CITY OF GREENVILLE

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

SCOPE OF TIP PROJECT (“Project”): This Project consists of widening SR 1203 (Allen Street) to multi-lanes from SR 1467 (Stantonsburg Road) to US 13 (Dickinson Avenue Extension).

ADDITIONAL WORK: install protective coating on signal poles and illuminated signs on signal poles.

ESTIMATED COST OF THE ADDITIONAL WORK: \$ 33,400

COSTS TO OTHER PARTY: \$ 33,400

PAYMENT TERMS: The City of Greenville will submit payment upon completion of the Project.

MAINTENANCE: Department

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: When work is complete and all terms are met.

This Agreement is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the **Department** and the City of Greenville, hereinafter referred to as the **Municipality**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties**

with respect to its subject matter and supersedes any previous communication or agreements that may exist.

I. WHEREAS STATEMENTS

WHEREAS, this Agreement is made under the authority granted to the **Department** by the North Carolina General Assembly under General Statutes of North Carolina (NCGS), particularly Chapter 136-66.1 and 136-66.3; and,

WHEREAS, the **Department** and the **Municipality** have agreed that the jurisdictional limits of the **Parties**, as of the date of entering the agreement for the above-mentioned project, are to be used in determining the duties, responsibilities, rights, and legal obligations of the **Parties** hereto for the purposes of this Agreement; and,

WHEREAS, the **Municipality** has requested that the **Department** perform all phases of said work or provide services; and,

WHEREAS, the **Parties** hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** (including reviews, goods, or services) with reimbursement for the costs thereof by the **Municipality** as hereinafter set out.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the **Parties** do hereby covenant and agree, each with the other, as follows:

II. RESPONSIBILITIES

A. DEPARTMENT

The **Department** shall be responsible for all phases of project delivery to include planning, design, right of way acquisition, utility relocation, and construction as shown in the **PROJECT DELIVERY** Provision.

B. MUNICIPALITY

The **Municipality** shall be responsible for maintenance as shown in the **PROJECT DELIVERY** Provision and payment as shown in the **COSTS AND FUNDING** Provision.

III. PROJECT DELIVERY REQUIREMENTS

A. PLANNING, DESIGN, AND CONSTRUCTION

- i. The **Department** will be responsible for preparing the environmental and/or planning document and obtaining any environmental permits.

- ii. The **Department** will be responsible for preparing the project plans and specifications and letting the Project to construction.
- iii. The **Department** shall construct the Project in accordance with the plans and specifications for the Project. The **Department** shall administer the construction contract for said Project. All work shall be done in accordance with Departmental standards, specifications, policies, and procedures.

B. RIGHT OF WAY ACQUISITION

The **Department** will be responsible for acquiring any needed right of way required for the Project in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.

C. MUNICIPAL UTILITY RELOCATIONS

Responsibilities

It is understood that the municipally-owned water and sewer lines are owned by **Greenville Utilities Commission**, therefore a separate Utility Agreement will be prepared with **Greenville Utilities**. The **Municipality** shall exercise any rights which it may have under any franchise to effect all necessary changes, adjustments, and relocations of communications and electric power lines; underground cables, gas lines, and other pipelines or conduits; or any privately- or publicly-owned utilities.

D. MAINTENANCE

Upon completion of the Project:

- i. The **Municipality** shall be responsible for the maintenance of the protective coating on signal poles and illuminated signs on signal poles.
- ii. The **Department** shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the "Policy on Street and Driveway Access to North Carolina Highway," and department criteria.
- iii. The roadway improvements that are within state-owned right of way shall be considered a part of the State Highway System and shall be owned and maintained by the **Department**.

IV. COSTS AND FUNDING

A. ADDITIONAL WORK

At the request of the **Municipality** and in accordance with the **Department's** Pedestrian Policy Guidelines or the Complete Streets Guidelines, the **Department** shall include provisions in its construction contract for the construction of pedestrian facilities and/or other additional work as indicated in the Table below. Said work shall be performed in accordance with the **Department's** policies, procedures, standards, and specifications, and the provisions of this Agreement.

Description	Cost to Municipality
Illuminated signs on signal poles	\$ 6,400
Protective coating on signal poles	\$ 27,000
Total Estimated Cost to Municipality	\$ \$33,400

The estimated Municipal share of the additional work is \$ \$33,400. The **Parties** understand that this is an estimated cost and subject to change.

B. PROJECT COSTS

The **Municipality** has agreed to participate in the Project costs as follows:

- i. The estimated cost of the additional work is \$ \$33,400. The **Municipality** shall participate in 100% of actual costs. The **Department** will participate in 0% of actual costs.
- ii. The **Department** may consult with the **Municipality** on changes to cost estimates prior to construction, or changes to costs during construction. Consultation between the **Department** and the **Municipality** is offered as a courtesy to apprise the **Municipality** of potential cost increases and to allow appropriate budgeting. Failure of the **Department** to notify the **Municipality** of cost increases does not affect the payment terms of the agreement.

C. PAYMENT BY THE MUNICIPALITY

- i. Upon completion of the Project, the **Department** will calculate actual costs and bill the **Municipality** per **Project Costs** Provision. The **Municipality** shall reimburse the **Department** within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23.
- ii. At any time prior to final billing by the **Department**, the **Municipality** may prepay any portion of the estimated cost by sending payment in accordance with the attached

“Remittance Guidance”. The **Department** will provide a final billing based on the fixed cost, less any previous payments that have been made.

- iii. In the event the **Municipality** fails for any reason to pay the **Department** in accordance with the provisions for payment hereinabove provided, North Carolina General Statute 136-41.3 authorizes the **Department** to withhold so much of the **Municipality’s** share of funds allocated to said **Municipality** by North Carolina General Statute, Section 136-41.1, until such time as the **Department** has received payment in full.

V. STANDARD PROVISIONS

A. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.

B. ASSIGNMENT OF RESPONSIBILITIES

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

C. AGREEMENT FOR IDENTIFIED PARTIES ONLY

This Agreement is solely for the benefit of the identified **Parties** to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

D. OTHER AGREEMENTS

The **Municipality** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Municipality** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

E. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

F. FACSIMILE

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that

this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

G. AUTHORIZATION TO EXECUTE

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

H. DEBARMENT POLICY

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Municipality** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

I. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

J. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

K. DOCUSIGN

The **Department** and **Municipality** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or the **Municipality**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and **Municipality** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes **Department's** signature as if actually signed by the **Department** in writing or the **Municipality's** signature as if actually signed by

the **Municipality** in writing. The **Department** and **Municipality** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and **Municipality** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

L. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(DOCUSIGN ONLY)

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

CITY OF GREENVILLE

FED TAX ID NO: _____

Finance Officer: _____

REMITTANCE ADDRESS:

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(INK SIGNATURES ONLY)

ATTEST: Authorized Signer: _____

BY: _____ Print Name: _____

TITLE: _____ Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

CITY OF GREENVILLE

FED TAX ID NO: _____ Finance Officer: _____

REMITTANCE ADDRESS: _____ Print Name: _____

_____ Date Signed: _____

DEPARTMENT OF TRANSPORTATION (DocuSign)

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)

**ACCOUNTS PAYABLE
MAINTENANCE AGREEMENT – LANDSCAPE
AGREEMENT ID # 13191**

AGREEMENT OVERVIEW

NORTH CAROLINA
PITT COUNTY

DATE: 3/11/2025

PARTIES TO THE AGREEMENT:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

AND

CITY OF GREENVILLE

PROJECT NUMBERS:

TIP U-5875

WBS ELEMENTS: 44677.3.1

CFDA: 20.205

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

SCOPE OF PROJECT (“Project”): This Project consists of widening SR 1203 (Allen Street) to multiple lanes from SR 1467 (Stantonsburg Road) to US 13 (Dickinson Avenue Extension).

COSTS TO DEPARTMENT: \$323,190.40

PAYMENT TERMS: The City of Greenville will invoice the Department upon completion of the Project.

MAINTENANCE: City of Greenville

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: Five (5) years from the date of execution

This **Agreement** is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the **Department** and the City of Greenville, hereinafter referred to as the **Municipality**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

I. WHEREAS STATEMENTS

WHEREAS, the **Department** and the **Municipality** propose to make certain landscape improvements under 44677.3.1, Pitt County; and,

WHEREAS, the **Municipality** has agreed to participate in the responsibilities of the project as hereinafter set out.

NOW, THEREFORE, the **Parties** hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant, and agree, each with the other, as follows:

II. PLANNING, RIGHT OF WAY, AND UTILITIES

- i. The **Department** shall develop the landscape design and prepare the landscape plans and specifications in accordance with the **Department's** standard landscaping policies and procedures for highways.
- ii. All work shall be performed within the existing right of way and in accordance with Departmental standards, policies, and procedures.
- iii. The **Department** does not anticipate the need to relocate and adjust any municipally-owned utilities at this time. If during the project it becomes necessary to adjust and relocate the municipally-owned utilities, the **Municipality**, at no expense to the **Department**, shall be responsible for the relocation and adjustment of all utilities in conflict with the landscape planting.

III. CONSTRUCTION AND MAINTENANCE

- i. The **Department** shall install, or cause to be installed, said plantings in accordance with the plans and specifications of said project as filed with, and approved by, the **Department**.
- ii. Upon completion of the plantings, the **Department** shall maintain said planting areas for a period of one (1) year, at no expense to the **Municipality**.
- iii. At the end of the one (1) year establishment period, the **Municipality** shall assume responsibility for all maintenance and replacement of the landscape materials. Maintenance shall include, but not be limited to, the following: watering, mulching, pruning, fertilizing, weeding, pest control, mowing, and replacing plant materials. All costs of maintenance shall be borne by the **Municipality** in accord with the following provisions:
 1. The **Municipality** agrees to continually maintain all plantings in accordance with generally accepted horticultural practices. The **Department** shall have the right to periodically inspect the maintenance practices being utilized by the **Municipality**.

**ACCOUNTS PAYABLE
MAINTENANCE AGREEMENT – LANDSCAPE
AGREEMENT ID # 13191**

2. If the **Department** determines that the **Municipality** is not properly maintaining the plantings, the **Department** shall notify the **Municipality**. If proper maintenance is not performed by the **Municipality** within a reasonable time after notification, the **Municipality** agrees that the **Department** shall perform the necessary maintenance, or at the **Department's** option, shall return the planted area to a natural condition (i.e. seeded and mulched, etc.). It is further agreed that the costs of the restoration shall be reimbursed to the **Department** by the **Municipality**. Reimbursement to the **Department** shall be made in one final payment within sixty (60) days of invoicing by the **Department**. The **Department** shall charge a late payment penalty and interest on any unpaid balance due in accordance with N.C.G.S. § 147-86.23.
- iv. In the event the plantings require relocation or removal for highway construction, reconstruction, maintenance or safety, the **Municipality** shall be given the option to remove or relocate any plantings it considers salvageable immediately upon notification by the **Department**, at no expense to the **Department**.
- v. The **Department**, at the end of the one (1) year establishment period, shall not be responsible for any damage to the plantings that may be done by third parties.

IV. ADDITIONAL PROVISIONS

A. ENVIRONMENTAL REGULATIONS

The **Municipality** shall comply with all applicable federal, state, and local environmental regulations, and shall obtain all necessary federal, state and local environmental permits, including but not limited to, those related to sediment control, storm water, wetland, streams, endangered species, and historical sites.

B. PARTICIPATION BY DISADVANTAGED BUSINESSES

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Minority Businesses, Women Businesses, or Small Professional Services Firms (SPSF) as required by G.S. 136-28.4 and the North Carolina Administrative Code. The **Department** will provide the appropriate provisions to be contained in those contracts.

C. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.

D. ASSIGNMENT OF RESPONSIBILITIES

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

E. AGREEMENT FOR IDENTIFIED PARTIES ONLY

This Agreement is solely for the benefit of the identified **Parties** to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

F. OTHER AGREEMENTS

The **Municipality** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Municipality** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

G. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

H. FACSIMILE

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

I. AUTHORIZATION TO EXECUTE

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

J. DEBARMENT POLICY

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Municipality** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or **Department** and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

K. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if

**ACCOUNTS PAYABLE
MAINTENANCE AGREEMENT – LANDSCAPE
AGREEMENT ID # 13191**

applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns to the extent allowed by law, from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

L. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

M. DOCUSIGN

The **Department** and **Municipality** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or **Municipality**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and **Municipality** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or **Municipality's** signature as if actually signed by **Municipality** in writing. The **Department** and **Municipality** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and **Municipality** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

N. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

**ACCOUNTS PAYABLE
MAINTENANCE AGREEMENT – LANDSCAPE
AGREEMENT ID # 13191**

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(DOCUSIGN ONLY)

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

CITY OF GREENVILLE

FED TAX ID NO: _____

Finance Officer: _____

REMITTANCE ADDRESS:

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)

**ACCOUNTS PAYABLE
MAINTENANCE AGREEMENT – LANDSCAPE
AGREEMENT ID # 13191**

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(INK SIGNATURES ONLY)

ATTEST: _____ Authorized Signer: _____

BY: _____ Print Name: _____

TITLE: _____ Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

CITY OF GREENVILLE

FED TAX ID NO: _____ Finance Officer: _____

REMITTANCE ADDRESS: _____ Print Name: _____

_____ Date Signed: _____

DEPARTMENT OF TRANSPORTATION (DocuSign)

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Resolution authorizing the filing of an application to the North Carolina Department of Transportation Integrated Mobility Division for the Multimodal Planning Grant Program and Delegation of Authority to Submit Assurances and Execute Grant Agreement.
<u>Explanation:</u>	<p>The NCDOT Integrated Mobility Division and the Transportation Planning Division created an annual matching grant program – the Multimodal Planning Grant Program – to encourage municipalities to develop comprehensive pedestrian plans. This program was initiated in January 2004 and is currently administered through NCDOT - Integrated Mobility Division.</p> <p>A comprehensive pedestrian network plan allows a municipality to set a vision for pedestrian transportation in their community, plan for a pedestrian network, and identify priority pedestrian projects. Having a plan for our network to include prioritized projects allows the City to better communicate and coordinate their active transportation needs with regional planning organizations and NCDOT during transportation planning and project development.</p> <p>Goals of the plan include but are not limited to:</p> <ul style="list-style-type: none">• List of short-term and long-term pedestrian improvements and implementation plan• Cutsheets for priority projects, with additional detail and planning level cost estimates for top 4-6 projects <p>Attached (Attachment A) for City Council consideration is a resolution authorizing the filing and execution of a grant application for the development of the pedestrian network plan. If awarded, the City would receive 60% of the total project cost. The remaining 40% would be a required local match.</p>
<u>Fiscal Note:</u>	The estimated amount of the plan is \$100,000. The required local match, if awarded, would be \$40,000. The funding for the local match will be provide by General Fund.
<u>Recommendation:</u>	Adopt the attached resolution authorizing the filing of application to the North Carolina Department of Transportation Integrated Mobility Division for the Multimodal Planning Grant Program and delegate authority to submit assurances and execute grant agreement.

ATTACHMENTS

☐ [Attachment A-2025 MMPG Resolution.docx](#)

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE FILING OF APPLICATIONS TO THE
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION INTEGRATED MOBILITY
DIVISION FOR THE MULTIMODAL PLANNING GRANT PROGRAM
FOR DEVELOPING A COMPREHENSIVE PEDESTRIAN PLAN.

WHEREAS, The North Carolina Department of Transportation (NCDOT) Integrated Mobility Division and the Transportation Planning Division created an annual matching grant program – the Multimodal Planning Grant Program (MMPG) – to encourage municipalities to develop comprehensive pedestrian plans; and

WHEREAS, the MMPG is intended to support the development of a multimodal network plan or a comprehensive bicycle or pedestrian transportation plan; and

WHEREAS, a comprehensive pedestrian plan supports implementation of pedestrian improvements and fosters a more walkable environment and an overall higher quality of life for the community residents and visitors; and

WHEREAS, a comprehensive pedestrian network plan allows a municipality to set a vision for pedestrian transportation in their community, plan for a pedestrian network, and identify priority pedestrian projects; and

WHEREAS, the City of Greenville carefully considers grant programs that assist the City in achieving projects and programs that are priorities for the community; and

WHEREAS, the deadline for application is May 12, 2025; and

WHEREAS, this grant application requires a 40 percent local match from the municipality.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA:

1. That the City Manager is authorized to execute and file application on behalf of the City of Greenville with the NCDOT Integrated Mobility Division for the Multimodal Planning Grant Program.
2. That the City Manager is authorized to execute and file the Assurances and other documents required before awarding a grant or cooperative agreement.
3. That the City Manager is authorized to submit additional information as required in connection with the application or project.

4. That the City Manager is authorized to set forth and execute affirmative minority business policies in connection with the project.
5. That after certification of funds by the Chief Financial Officer, the City Manager is hereby authorized to execute the grant agreement on behalf of the City of Greenville and that their signature constitutes acceptance of the terms and conditions of the grant agreements.

ADOPTED this the 5th day of May, 2025.

P.J. Connelly, Mayor

CERTIFICATION

The undersigned duly qualified City Clerk, acting on behalf of the City of Greenville, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Greenville City Council on 5th day of May 2025.

Valerie Shiuwegar, City Clerk

SEAL

Date



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Second Amendment to the Management Agreement Between the City of Greenville and Indigo Sports, LLC for Management of Bradford Creek Public Golf Course

Explanation: Bradford Creek Golf Course is a Municipal Course owned by the City of Greenville. The 18-hole golf course was purchased by the City in 1999 and includes a clubhouse, driving range, putting green and other amenities. The course was managed by City staff until the City entered an agreement with Indigo Sports, LLC (formerly Billy Casper Golf) to manage the course in December, 2017.

The initial five-year management agreement began on January 1, 2018, with Indigo Sports first full year of operation in Fiscal Year 2018-2019. The first amendment to the agreement, dated November 9, 2020, extended the term and introduced a City-implemented management plan. This plan facilitated feedback to Indigo Sports staff and established open communication, which positively impacted golf course operations. The agreement has also resulted in various improvements at the course being completed since the partnership was established in 2017.

The second amendment extends the agreement for three years, expiring on December 31, 2029, and will renew annually thereafter. The base management fee will increase by 1.5% year-over-year to account for rising operational costs. Other terms of the agreement will remain the same.

City staff will continue to support Indigo Sports with the operations of Bradford Creek Golf Course by providing feedback as needed and assisting with marketing efforts where appropriate.

Fiscal Note: No impacts to the City's annual budget.

Recommendation: Approve Second Amendment to the Management Agreement Between the City of Greenville and Indigo Sports, LLC for Management of Bradford Creek Public Golf Course

ATTACHMENTS

☐ [Cleaned - Bradford Creek - Second Amendment - May 2025.DOCX](#)

**SECOND AMENDMENT
TO
MANAGEMENT AGREEMENT**

Bradford Creek Golf Course

This Second Amendment (the “**Amendment**”) is entered into this _____ day of February 2025 (the “**Effective Date**”), by and between the CITY OF GREENVILLE, a North Carolina Municipal Corp (“**Owner**”), and INDIGO SPORTS, LLC, a Delaware limited liability company (formerly known Billy Casper Golf, LLC and Antares Golf, LLC) (“**Indigo**”).

RECITALS:

A. Indigo is the manager of that certain golf course and related facilities located in Greenville, NC, known as the “*Bradford Creek Golf Course*”, pursuant to that certain Management Agreement by and between Billy Casper Golf, LLC and Owner dated December 6, 2017, as amended by that certain first Amendment dated November 9, 2020 (together, the “**Management Agreement**”).

B. Owner and Indigo have agreed to modify the Management Agreement in accordance with the terms and conditions set forth below.

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

AGREEMENTS:

1. **Recitals.** The foregoing recitals are incorporated herein by this reference. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Management Agreement.

2. **References to “Indigo”.** Notwithstanding anything to the contrary in the Management Agreement, references to “*Antares*” throughout the Agreement shall be replaced with “*Indigo*.”

3. **Term.** Notwithstanding anything to the contrary in the Management Agreement, reference to “*eight (8) years*” in Paragraph 2 shall be deleted and replaced with “*eleven (11) years*.”

4. **Base Management Fee.** Notwithstanding anything to the contrary in the Management Agreement, from and after January 1, 2026 and continuing on each January 1 thereafter during the Term, the Base Management Fee for each fiscal year shall be the Base Management Fee applicable to the prior fiscal year as increased by three percent (1.5%).

5. **Capital Improvements.** For clarity and the avoidance of doubt, in addition to the rights and obligations under Paragraph 8, Owner shall be responsible for procurement of any capital items and capital equipment leases. Indigo shall be responsible for payments of all leased items.

6. **General.**

(a) This Second Amendment shall be governed by and construed in accordance with the laws of the State of North Carolina.

(b) Each person signing below represents and warrants that he or she is fully authorized to execute and deliver this Second Amendment in the capacity set forth beneath his or her signature.

(c) This Second Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) This writing constitutes the entire agreement of the parties with respect to the subject matter hereof and may be amended only by written agreement signed by each party.

(e) This Second Amendment may be executed in two or more counterparts (including facsimile), each of which shall be deemed to be an original and all of which together shall be deemed to constitute one and the same agreement.

Except as expressly amended herein, all terms and conditions of the Management Agreement shall remain unchanged and in full force and effect. In the event of a conflict or inconsistency among the following documents, the order of precedence will be: (1) Second Amendment, (2) First Amendment and (3) the Management Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to Management to be executed on the day and year first written above.

Owner:

CITY OF GREENVILLE,
a North Carolina Municipal Corp

Indigo:

INDIGO SPORTS, LLC,
a Virginia limited liability company

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Resolution Approving a Lease Agreement with U.S. Bank Equipment Finance for Cardio Exercise Equipment for the Greenville Aquatics and Fitness Center

Explanation: The current lease agreement for the exercise equipment at the Greenville Aquatics and Fitness Center will expire in June. The proposed 48-month lease agreement will replace the current agreement.

The lease agreement with US Bank Equipment Finance is for cardio equipment located at the Greenville Aquatics and Fitness Center. Leasing the exercise equipment is more cost efficient than purchasing and ensures quality service to current and future members. The lease covers 17 pieces of equipment manufactured by Life Fitness including treadmills, stair steppers, various stationary bikes and more, and includes a warranty for the entire term. A complete list of equipment begins on page 3 of the lease.

Equipment leasing has been the practice at the Greenville Aquatics and Fitness Center for over 20 years. A full lease including pricing for each piece of equipment and insurance information is included as an attachment.

Fiscal Note: Four (4) year lease for 17 pieces of cardio fitness equipment: \$2,503.97/month for 48 months. Funds for the equipment lease are included in the Recreation & Parks budget. At the end of the lease, each piece of equipment may be purchased for \$1.00.

Recommendation: Adopt the resolution authorizing the execution by the City Manager of the Lease Agreement with U.S. Bank Equipment Finance, a division of U.S. Bank National Association, and the execution of the documents associated with said Lease Agreement by the City Manager and other officials of the City of Greenville.

ATTACHMENTS

- ☐ [Council Resolution - GAFC Equipment Lease - Life Fitness.DOCX](#)
- ☐ [Clean GAFC Fitness Equipment Lease - US Bank - 5.5.25.pdf](#)

RESOLUTION - 25
RESOLUTION APPROVING A LEASE AGREEMENT FOR EXERCISE EQUIPMENT
LOCATED AT THE GREENVILLE AQUATICS AND FITNESS CENTER

WHEREAS, the City of Greenville Recreation and Parks Department has determined that it is beneficial to acquire exercise equipment to be located at the Greenville Aquatics and Fitness Center by a Lease Agreement for a forty-eight (48) month period; and

WHEREAS, North Carolina General Statute 160A-19 authorizes the City of Greenville to lease as lessee exercise equipment which will be located at the Greenville Aquatics and Fitness Center.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the Lease Agreement with U.S. Bank Equipment Finance, a division of U.S. Bank National Association, for exercise equipment to be located at the Greenville Aquatics and Fitness Center, for a term of forty-eight (48) months.

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that it does hereby approve and authorize the execution by the City Manager of the Lease Agreement with U.S. Bank Equipment Finance, a division of U.S. Bank National Association, and the execution of the documents associated with said Lease Agreement by the City Manager and other officials of the City of Greenville.

This the 5th day of May, 2025.

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk



U.S. Bank Equipment Finance
13010 SW 68th Parkway, Ste 100
Portland, OR 97223

April 22nd, 2025

City of Greenville NC
921 Staton Rd
Greenville, NC 27834

U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("USBEP") and Life Fitness are pleased to present the following proposal ("Proposal") for the acquisition of the fitness equipment detailed in the attached quote. Upon your approval, this Proposal will outline the terms and conditions for financing from USBEP. **This is only a proposal. It does not represent a commitment by USBEP**, and it is subject to the terms and conditions of this letter, no material adverse change in the financial condition and/or business prospects of your company and any guarantor(s), and an approval by USBEP's credit team.

Lessee: City of Greenville NC

Lessor: U.S. Bank Equipment Finance, a division of U.S. Bank National Association

Equipment Description: As detailed in the attached Life Fitness Quote #CPQ-3786

Equipment Cost: \$102,628.62 (includes est. sales tax, subject to changes)

Transaction Term (in months):	36 @ 8.28%	48 @ 7.96%	60 @ 7.77%
Payment Amount (Capital Lease):	\$3,229.41	\$2,503.97	\$2,069.81
Payment Amount (Fair Market Value Lease):	\$2,766.32	\$2,261.83	\$1,926.28

End of Term Purchase Options: Capital Lease - Lessee may purchase the equipment for \$1.00 at end of term. Fair Market Value Lease - Lessee may purchase the equipment at end of term for its then fair market value; or, subject to then-current credit criteria, Lessee may continue to lease the equipment for its then fair market rental renewal rate; or, Lessee may return the equipment to Lessor at Lessee's expense.

Net Lease: Lessee will be responsible for the payment of all maintenance, licenses, property taxes, sales/use taxes, insurance and all costs and risks of operation of the equipment during the term.

Index Rate: The lease payments were calculated, in part, based on the like term SOFR based interest SWAP rate as published by Bloomberg as of the Index Date of 3/25/2025. The lease payments may be adjusted to reflect any change in the Swap Rate as of the closing date. Upon closing the rate will become fixed through the term of the Lease Agreement. Sales/use tax will be added as applicable.

Expiration of Proposal: 4/30/2025

By accepting this proposal, applicant acknowledges that this proposal does not represent a commitment to provide financing but only outlines general terms and conditions of the Lessor's financing program currently available to qualified lessees. Final documentation pertaining to this transaction will be provided by the Lessor, and this proposal is subject to the execution of all documentation by Lessee within a reasonable time and in form and substance acceptable to both Lessee and Lessor. In the event that any material adverse change in or material disruption of financial, banking, syndication, or capital market conditions occurs after the date of this Proposal, Lessor may modify the pricing as described herein. Lessor makes no representations with respect to appropriate accounting or tax treatment of a lease based on the terms of this Proposal. Lessee is encouraged to consult with its accounting or tax advisors to confirm appropriate accounting and/or tax treatment with respect to the equipment or the lease. No oral discussions and/or written agreements shall be in place of or

supersede a written financing agreement executed by your business and accepted by Lessor. This Proposal is for your review only. This quote is valid for thirty (30) days from issuance.

Thank you for discussing your financing needs with us. Provided this proposal meets with your approval, please indicate by signing below and faxing a copy to (800) 334-2510 or email to Michael.Doeden@usbank.com along with the requested information above. If you would like to discuss this or other available payment structures, please call me direct at (320) 224-3372.

Sincerely,
U.S. Bank Equipment Finance, a division
of
U.S. Bank National Association

Mike Doeden
Account Executive
Michael.Doeden@usbank.com

ACCEPTANCE:

We hereby apply for approval as Lessee.

By: _____

Print Name and Title: _____

Dated: ____/____/____

Term Requested: ☐ 36 mo. ☐ 48 mo. ☐ 60 mo.

End of Term Option Requested: ☐ \$1.00 ☐ FMV

1310 Madrid St • Marshall, MN 56258 • Phone: 800-941-7456 • Fax: 800-334-2510

CUSTOMER INFORMATION

Legal Name		Address		
City	State	Zip	Phone	Fax
Federal Tax ID #		Contact Email		
Type of business <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Proprietorship <input type="checkbox"/> Partnership		Number of years in business under current ownership		
Billing address (if different from above)		City	State	Zip

VENDOR INFORMATION

Vendor Name	Vendor Address	Vendor Phone
Life Fitness LLC	Rosemont, IL	847-288-3300

FINANCE INFORMATION

Term	Amount wishing to finance \$	Equipment Description
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PRINCIPALS INFORMATION

Name/Title	Principal Email	Home Phone	Cell Phone	
Home Address	Date of Birth	Social Security #	Professional License #	% Ownership
Name/Title	Principal Email	Home Phone	Cell Phone	
Home Address	Date of Birth	Social Security #	Professional License #	% Ownership

The undersigned consents to and authorizes the use of his/her consumer credit report by U.S. Bank National Association ("we," "us," or "our") or a third party from time to time as may be needed in the credit and collection process and further authorizes banks, trade references and financial institutions the right to release information to us, to share credit information with our affiliates and agents, as well as Applicant's other creditors, bureaus and persons who have or expect to have financial dealings with the Applicant or its principals named above, and to share collection information with Applicant's other creditors. All the information in this Application is true, complete and correct. The person signing below on behalf of Applicant is authorized to make this Application on its behalf and to agree to the foregoing, and also has the authority to act for Applicant's principals and co-owners in instructing us and our agents to obtain credit reports on them. IMPORTANT CUSTOMER INFORMATION: To help the government fight the funding of terrorism and money laundering activities, Federal law requires financial institutions to obtain, verify and record identifying information on new customers. The personal data requested above will allow us to identify each person signing this Application. We may also ask for copies of driver's licenses or other identifying documents. By providing us with a telephone number for a cellular phone or other wireless device, including a number that you later convert to a cellular number, you are expressly consenting to receiving communications, including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system, from us and our affiliates and agents at that number. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from your cellular provider.

Signature	Title	Date
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Thank you for your business credit application. We will review it carefully and get back to you promptly. If your application for business credit is denied, you have the right to a written statement of the specific reasons for denial. To obtain that statement, please contact us within 60 days from the date that you are notified of our decision. We will send you a written statement of the reason for denial within 30 days of your request for the statement. NOTICES: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers our compliance with this law is the Bureau of Consumer Financial Protection, 1700 C Street NW., Washington, DC 20006

Please fax completed page to 800-334-2510.

U.S. Bank Contact

Mike Doeden	(320) 224-3372	(800) 334-2510	Michael.Doeden@usbank.com
Name	Phone	Fax	Email



LifeFitness

**HAMMER
STRENGTH**



PREPARED BY

Deborah McConnell

Email: deborah.mcconnell@lifefitness.com

Phone: (843) 503-2206

Inspiring the world to work out

**QUOTE :** CPQ-3786**DATE :** 04-01-2025**BILL TO :** CITY OF GREENVILLE NC**SHIP TO :** CITY OF GREENVILLE NC

PURCHASING DEPT PO BOX 7207

AQUATICS AND FITNESS

CENTER

921 STATON RD

GREENVILLE

GREENVILLE

NC 27835

NC 27834-9050

US

US

ONSITE CONTACT

John Barrow

(252) 329-4041

jbarrow@greenvillenc.gov

Thank you for the opportunity to present a comprehensive equipment recommendation. It is an honor to be considered and we hope you will select us to partner with you to create a premier fitness facility for your organization.

Choosing the right fitness equipment can be daunting. The products you select must be easy to use and inviting for a variety of exercisers. They must be durable and reliable -- capable of standing up to the rigors of continued daily use. That is why partnering with an industry-leading manufacturer uniquely qualified to guide you through the process is so important.







Life Fitness has over 30 years' experience helping facilities select their fitness equipment and create customized fitness environments that encourage exercisers to work out more often and lead healthier lives. We offer the largest breadth of cardio, strength and performance-training equipment, value-added services, and ongoing support to ensure that your facilities' needs will be met in the years to come.

If you have any questions or comments regarding our proposal, please contact us as indicated below. The Life Fitness team looks forward to supporting you in the future.


Sincerely,

LIFE FITNESS



#	DESCRIPTION	SPECIFICATIONS	QTY	LIST PRICE	UNIT PRICE	TOTAL PRICE
Cardio						
1	INTEGRITY+ CROSS-TRAINER w/SL INX-SL-XF-13	 Int Plus Cross Trainer SL Arctic Silver Base SL English Imperial	3	\$7,999.00	\$4,799.40	\$14,398.20
2	Extended Warranty, Parts & Labor- 4 Year, Crosstrainer with 33 Std EW3-CROSSTRAIN-PARTLBR-4YR		3	\$220.00	\$125.00	\$375.00
3	INTEGRITY+ RECUMBENT BIKE w/SL INR-SL-XF-13	 Int Plus Recumbent SE4 Arctic Silver Base SL English Imperial	2	\$5,599.00	\$3,359.40	\$6,718.80
4	Extended Warranty, Parts & Labor- 4 Year, Upright and Recumbent Bike with 3 Std EW3-BIKE-PARTLBR-4YR		2	\$220.00	\$125.00	\$250.00
5	INTEGRITY+ TREADMILL w/SL INT-SL-XF-14	 Int Plus Tread SL Arctic Silver Low Volt Base SL English Imperial Power Cord DOM Low Volt 90 DEG 96 IN	6	\$9,999.00	\$5,999.40	\$35,996.40
6	Extended Warranty, Parts & Labor- 4 Year, Treadmill with 33 Std EW3-TREAD-PARTLBR-4YR		6	\$438.00	\$250.00	\$1,500.00
7	INTEGRITY+ UPRIGHT BIKE w/SL INC-SL-XF-13	 Int Plus Upright SL Arctic Silver Base SL English Imperial	1	\$4,999.00	\$2,999.40	\$2,999.40
8	Extended Warranty, Parts & Labor- 4 Year, Upright and Recumbent Bike with 3 Std EW3-BIKE-PARTLBR-4YR		1	\$220.00	\$125.00	\$125.00
9	LIFE FITNESS LOWER BODY ARC TRAINER w/SL INA-LSL-XF-13	 LB Arc Trainer SL Arctic Silver Base SL English Imperial	2	\$10,199.00	\$6,119.40	\$12,238.80
10	Extended Warranty, Parts & Labor- 4 Year, Arc Trainer with 33 Std EW3-ARC-PARTLBR-4YR		2	\$220.00	\$125.00	\$250.00
11	LIFE FITNESS POWERMILL w/SL INPM-SL-XF-13	 PowerMill Base Handlebar Arctic Silver Kit SL English Imperial Power Cord DOM Low Volt Straight	2	\$11,999.00	\$7,199.40	\$14,398.80
12	Extended Warranty, Parts & Labor- 4 Year, Powermill and Stair Climber with 33 Std EW3-STAIRCLIMB-PARTLBR-4YR		2	\$438.00	\$250.00	\$500.00

*LifeFitness***HAMMER
STRENGTH**

#	DESCRIPTION	SPECIFICATIONS	QTY	LIST PRICE	UNIT PRICE	TOTAL PRICE
13	SCIFIT StepOne Rec Step DOM Prem Seat <u>SONE03</u>		1	\$7,147.00	\$5,204.25	\$5,204.25
14	Extended Warranty, Parts & Labor- 3 Year, SciFit Equipment <u>EW-SCIFIT-PARTLBR-3YR</u>		1	\$203.00	\$116.00	\$116.00

Fee

1	TRADE IN NON LIFE FITNESS TREADMILL <u>TRADE IN TREAD</u>		1	-\$1.00	8,900.00	\$8,900.00
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QUOTE : CPQ-3786

DATE : 04-01-2025

BILL TO : CITY OF GREENVILLE NC

SHIP TO : CITY OF GREENVILLE NC

SHIPMENT : STANDARD
FREIGHT TERMS : Prepaid
FOB : Shipping Point
PAYMENT TERM : NET 30

LIST PRICE	:	\$157,198.00
CUSTOMER DISCOUNT	:	- \$62,127.35
TRADE-IN	:	- \$8,900.00
SELLING PRICE	:	\$86,170.65
FREIGHT / FUEL/ INSTALLATION	:	\$9,161.69
ESTIMATED SALES TAX	:	\$7,296.28
TOTAL (USD)	:	\$102,628.62

REMITTANCE ADDRESS
2716 NETWORK PLACE
CHICAGO, IL 60673
USA



TERMS & CONDITIONS

This order quote is valid for 30 days. Buyer may accept by either (1) returning this quote with Buyer's signature or (2) by Buyer issuing a Purchase Order against this quote to Life Fitness. In all cases, this order quote and its acceptance are subject to the Life Fitness Commercial Terms & Conditions of Sale posted online at www.lifefitness.com/en-us/legal/terms-conditions which supersede any terms in Buyer's purchase orders, policies, vendor guidelines and any other documents that pre-date or post-date this purchase. Any inconsistent terms in Buyer's documents are deemed to have been rejected.

Upon acceptance by Buyer and then Life Fitness, this Agreement shall become legally binding and constitutes the sole and complete agreement of the parties.

Unless otherwise required by applicable law, this Agreement shall be governed by the laws of the State of North Carolina. The exclusive jurisdiction for dispute resolution shall be in the Courts of North Carolina.

For avoidance of doubt, if Buyer and Life Fitness executed an active Master Agreement, the applicable Master Agreement will govern this Agreement and the Life Fitness Standard Terms and Conditions will supplement.

QUOTE APPROVAL	USD OPERATING UNIT <small>Signed by:</small>
SIGNATURE _____	SIGNATURE <u>Amber Roberson</u>
NAME _____	NAME <u>Amber Roberson</u>
TITLE _____	TITLE <u>VP sales</u>
DATE OF ACCEPTANCE _____	Apr 1, 2025 10:49 AM CDT

Title VI of the Civil Rights Act of 1964
Nondiscrimination Provisions, Appendices A & E.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, creed (religion), low-income, limited English proficiency, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or

the USDOT to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

- I. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq);
- Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity).

APPROVED AS TO FORM:

BY: _____

City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: _____

Jacob Joyner, Director of Financial Services

DATE: _____

ACCOUNT NUMBER 010-04-50-53-000-000-521500

PROJECT CODE (IF APPLICABLE) _____



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Request to Purchase New Additional Equipment for the Public Works Sanitation Division
<u>Explanation:</u>	<p>The Public Works Department is requesting to purchase 1 additional piece of equipment for the Sanitation Division at a cost of \$293,449.00. The new equipment will be funded utilizing monies available from the Sanitation Vehicle Replacement Fund.</p> <p>These new vehicles will be purchased through the following contract:</p> <p>NC Sheriff's Association Contract: (1) 2025 Freightliner Leaf Collector</p>
<u>Fiscal Note:</u>	<p>Funding for these purchases will come from the Vehicle Replacement Fund (VRF), with budget appropriations transferred from the following funding source:</p> <p>Sanitation Capital Outlay/Equipment Account: \$293,449.00</p>
<u>Recommendation:</u>	City Council approve the purchase of the equipment as listed above using the Sanitation Vehicle Replacement Fund.

ATTACHMENTS

- ☐ [GREENVILLE NC 2025 LEAF VAC NCSA QUOTE-REVISED APRIL 2 2025.pdf](#)
- ☐ [COG-#1204298-v1-2025_PW_Sanitation_1_Additional_Equipment_Purchase_Agenda_Excel.XLSX](#)

Carolina Environmental Systems, Inc.
306 Pineview Drive, Kernersville, NC 27284
2701 White Horse Road, Greenville, SC 29611
500 Lee Industrial Blvd, Austell, Ga 30168
Phone: 800-239-7796
336-904-0952

QUOTE

April 2 , 2025

Mr. Larry Davis
Mr. Delbert Bryant
City of Greenville
1500 Beatty St
Greenville, NC 27834

Gentlemen,

CES appreciates the opportunity to submit you the following quotation:

- I. One (1) Pac Mac 25 cubic yard chassis mounted automated leaf collection unit complete with the following base unit items:
- Self-contained for one person operation
 - Proportional controls for smooth, precise boom movement
 - Hydraulic drive offers smooth engine to fan coupling with no maintenance to clutches or belt drives
 - 5 micron return filtration
 - Strobe lighting in front and rear
 - Leaf container is vented towards the bottom, street side
 - Removable screens for ease of cleaning

NC Sheriff's Association (NCSA bid 24-08-0421R, item number 1619)
Base Body Price: \$198,929
Less 6% Discount: (\$11,935.74)
Net Leaf Body Price: \$186,993.26

*Please note: Rear-vision camera, and Air-Flow Rail System are included in the price quoted.

II. One (1) 2025 Freightliner M2106 Plus dual steer cab/chassis complete as per the enclosed specifications

Chassis price: \$110,924

Total for I and II: \$297,917.26
Special CES additional 1.5% discount: -(\$4,469)

Net Total Price for I and II: \$293,448.26

Optional Extended Chassis Warranty not included :

- Two (2) year towing: \$ 460.00
- Five (5) year unlimited miles Allison transmission warranty: \$1,020
- Five (5) year 150,000 miles Cummins L9 engine warranty complete with 5 Yr Aftertreatment : \$ 3,290.00

Delivery: Approximate delivery July - August 2025. All equipment is quoted subject to prior sale

Terms : Full Net on Invoice / Delivery

*Please note: lead time is subject to change due to production schedule and parts availability at the time of order.

We sincerely appreciate the opportunity to submit the above quotation. If we may answer any questions or be of service to you in any way, please do not hesitate to contact us.

Sincerely ,

Chip Taylor

Carolina Environmental Systems, Inc.

Mobile : (803) 238-3590

e-mail : chiptaylor@sc.rr.com

FONTAINE DUAL SIT DOWN CONVERSION FEATURES:

- RH Driving position w/ dual tilted steering columns
- OEM Throttle and brake pedals on each side
- HVAC unit relocated to center of cab in console w/ dual cup holders
- Controls + Instrumentation :

Fontaine digital dash and speedometer, fuel level guage, dual air pressure guage, Turn signal lights, hazard lights, ABS warning light, high beam indicator, and NO odometer readout.

Self cancelling turn signal switch w/ integral emergency flasher + high beam switches

RH column type to match OE column

Center mounted ignition switch

Center mounted headlight switch

Center mounted power mirror switch

RH mounted regen light

OEM 18" steering wheel

#	Department	New Vehicle Make/Model	New Vehicle Description	Cost
1	Public Works Sanitation	2025 Freightliner	Automated Leaf Collector	\$293,449.00
Total				\$293,449.00

Contract
NC Sheriff s Association



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Contract Award for the 2025 Stormwater Repairs Project and Approval of Task Order #9 for Construction Engineering and Inspection (CEI) and Construction Materials Testing (CMT) On-Call Contract
<u>Explanation:</u>	<p>The 2025 Stormwater Repairs Project was advertised for bids on March 11, 2025, with the bid opening scheduled for April 8, 2025. Only two bids were received. Per state statute, staff scheduled a second bid opening for April 17, 2025.</p> <p>Two bids were received at the second bid opening. Trader Construction Company was the lowest responsible, responsive bidder in the amount of \$1,034,628.00.</p> <p>The contract provides for repairs and replacement of stormwater pipes, as well as cast in place lining and maintenance of underground existing pipe systems in Greenville. A bid summary (attachment 1) and list of the project locations to be completed (attachment 2) are attached.</p> <p>Task Order #9 under the City's CEI and CMT On-Call Contract with Gannett Fleming TranSystems provides inspection and materials testing services for the 2025 Stormwater Repairs Project. The estimated cost for this task order is \$238,580. Approval of this task order requires an increase to the not-to-exceed amount of the CEI and CMT On-Call Contract in the amount of \$100,000, for a total not-to-exceed amount of \$1,350,000. This is anticipated to be the final task order under the contract. A copy of the task order is included as Attachment 3.</p>
<u>Fiscal Note:</u>	The proposed budget for the 2025 Stormwater Repairs Project, including a 15% contingency, is \$1,189,822.20, and the contract amount for Task Order #9 is \$238,580. Both contracts will be funded through the Stormwater Utility Fund as approved by City Council.
<u>Recommendation:</u>	City Council award the contract for the 2025 Stormwater Repairs Project to Trader Construction Company of New Bern, NC for the base bid plus contingency in the amount of \$1,189,822.20, and approve Task Order #9 under the CEI and CMT On-Call Contract with Gannett Fleming TranSystems in the amount of \$238,580 and authorize the City Manager to execute an amendment to increase the base contract not-to-exceed amount.

ATTACHMENTS

- ☐ [Attachment 1 - Bid Summary.pdf](#)
- ☐ [Attachment 2 - 2025 Stormwater Repairs Street List.pdf](#)
- ☐ [Attachment 3 - TO #9 for CEI Services.pdf](#)

2025 Stormwater Repair Project
BID SUMMARY SHEET
City of Greenville, North Carolina
Engineering Division

Re-Bid Opening: April 17, 2025@ 10:00 am

<i>Contractor</i>	<i>Rec'd Addendum(s) 1</i>		<i>5% Bid Bond</i>		<i>M/WBE Submitted</i>		<i>NCA Form Submitted</i>		<i>Total Base Bid Alternates</i>
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	
Trader Construction Company	X		X		X		X		Base Bid: \$1,034,628.00
									Alt 1: \$105,724.50
									Alt 2: \$68,511.45
									Alt 3: \$32,337.90
									Alt 4 \$66,916.50
Crumb Construction, LLC	X		X		X		X		Base Bid: \$1,256,046.92
									Alt 1: \$161,937.30
									Alt 2: \$120,224.85
									Alt 3: \$116,144.83
									Alt 4: \$113,577.77

2025 Stormwater Repairs Project Street List

Base Bid:

W. 9th Street

E. Baywood Lane

Alexander Circle

Mosely Drive

Cortland Road

E. Roundtree Road

N. Overlook Drive

Hemby Lane

Melody Lane

Castlewood Drive

Remington Drive

Summerhaven Drive

Berkshire Drive

Hop Tyson Road

Alternates:

Wickham Drive

Dellwood Drive

Old Courthouse Drive

Shiloh Drive

SUGGESTED FORM OF TASK ORDER

This is Task Order
No. 009, consisting of
6 pages plus attachments

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

A. Title: **City of Greenville 2025 Stormwater Repairs Project – CEI Services**

B. Description: **CA/CEI Services for the City of Greenville's 2025 Stormwater Repairs Project**

C. Number of Construction Contracts

The 2025 Stormwater Repairs Project is anticipated to be constructed under one Construction Contract.

2. Services of Engineer

[Check all that apply.]

☐ Study and Report Services

☐ Design Services

☒ Designing to a Construction Cost Limit

Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$_____. The bidding and negotiating contingency to be added to the Construction Cost Limit is _____percent.

SUGGESTED FORM OF TASK ORDER

☐ Bidding or Negotiating Services

X Construction and Commissioning Services

Engineer will not establish baselines and benchmarks for locating work as indicated in Item 6 of Part 4 of Exhibit A. Engineer will not provide surveying services.

X Resident Project Representative Services

Engineer will provide Resident Project Representative services pursuant to Part 4 of Exhibit A; Exhibit D is attached to this Task Order and expressly incorporated by reference.

☐ Other Services

[After reviewing Part 5 of Exhibit A, Engineer's Services,, supplement or modify Part 5 as needed for the Specific Project and attach, reference, or insert specific text here.]

☒ Additional Services Requiring an Amendment to Task Order

Part 6 of Exhibit A is incorporated by reference unless otherwise noted.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following: [Here state any additions or modifications to Exhibit B, for this Specific Project.]

4. Times for Rendering Services

Phase

Preconstruction

Construction and Inspection

Post Construction

Completion Date

TBD based upon NTP

TBD based upon NTP, duration of nine (9) months

TBD based upon NTP

SUGGESTED FORM OF
TASK ORDER

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered as follows:

Category of Services	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Basic Services (Study and Report, Design, Bidding or Negotiating, Construction and Commissioning, Other Services)	Choose <u>One</u> : A. Lump Sum B. <u>Standard Hourly Rates</u> C. Direct Labor Costs Times a Factor (Factor:)	\$238.580
Resident Project Representative	Choose <u>One</u> : A. Lump Sum B. <u>Standard Hourly Rates</u> C. Direct Labor Costs Times a Factor (Factor:)	Combined with above
Additional Services Requiring an Amendment to Task Order	Choose <u>One</u> : A. Lump Sum B. <u>Standard Hourly Rates</u> C. Direct Labor Costs Times a Factor (Factor:)	

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

6. Consultants: Trimat; Terracon

7. Other Modifications to Agreement: None

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. Attachments:

Attachment #1 – Fee and Scope Proposal

Attachment #2 – Manpower Estimate

9. Documents Incorporated By Reference: City of Greenville Project Manual; Contract Forms; Project Plans; and Special Provisions of the 2025 Stormwater Repairs Project.

10. Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, 2025.

OWNER:

ENGINEER:

By: _____

By: C.E. Lassiter, Jr.

Name: P. J. Connelly

Name: C. E. Lassiter, Jr

Title: Mayor

Title: Sr. Vice President

Engineer License or Firm's
Certificate No. F-0453

State of: North Carolina

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK
ORDER:

Name: Lynn Raynor, PE

Name: C. E. Lassiter, Jr. PE

Title: Civil Engineer III

Title: Sr Vice President

Address: 1500 Beatty St; Greenville NC 27834

Address: 1 Glenwood
Suite 600
Raleigh, NC 27603

E-Mail

Address: lraynor@greenvillenc.gov

E-Mail

Address: nlassiter@transystems.com

Phone: 252-329-4620

Phone: 252-531-0064

Fax: 252-329-4535

Fax: 919-789-9591



TranSystems

1 Glenwood Avenue, Suite 600
Raleigh, NC 27603
Tel 919 789 9977

www.transystems.com

April 21, 2025

John P. Harrell
Construction Project Manager I
City of Greenville Engineering Department
1500 Beatty Street
Greenville, NC 27834

Subject: **City of Greenville – On Call CEI and Construction Materials Testing Services – 2025 Citywide Stormwater Drainage Improvements**

Dear JP,

TranSystems Corporation (TRANSYSTEMS) is pleased to provide the **City of Greenville** with a scope and fee proposal for Professional Construction Engineering and Inspection Services for the **On Call CEI and Construction Materials Testing Services – 2025 Citywide Stormwater Drainage Improvements Project**. This estimate is based upon our understanding of the project information and scope of work as provided in the project manual by the **City of Greenville**.

TRANSYSTEMS offers our clients a wide spectrum of services and we pride ourselves on being a full-service civil engineering and construction management firm with a 22-year history of providing professional engineering consulting services throughout North Carolina and the southeastern United States. Our services include site/civil engineering; land planning; surveying; environmental; planning; roadway design; traffic engineering; water resources; environmental remediation; construction engineering and inspection; and operations and maintenance. Our multi-disciplined structure enables TRANSYSTEMS to provide full consulting services for every step of a project from inception to implementation. Our local headquarters is in Raleigh, with branch offices located in Wilmington, Charlotte, Asheville, Charleston SC, Columbia, SC, and Beaufort SC.

Scope and Fee

Our scope of services includes your potential desire to have all construction management duties, contract administration, material verification, and construction materials testing associated with this project, performed to minimum **City of Greenville** and NCDOT specifications. The scope of this project would include the following:

- * Standard proctor value on the project subgrade
- * In place density testing on the subgrade in accordance with NCDOT protocols
- * Produce 7- and 28-day cylinders and strength testing for field samples of concrete samples and delivery to third party laboratory for testing
- * Nuclear gauge density testing of asphalt. In the event nuclear gauge is not used, asphalt cores will be taken
- * Conduct all concrete field testing (which includes concrete air entrainment and concrete slump)
- * Perform sampling for all appropriate materials on the project
- * Monitor sedimentation and erosion control devices and document revisions to include in project "as-builts"
- * Monitor traffic control plans for compliance

[1]

- * Monitor utility coordination, installation, conflicts, and relocations
- * Inspect asphalt repair/laydown operations
- * Maintain project documentation in accordance with minimum **City of Greenville** and NCDOT standards
- * Monitor storm drainage installation
- * Perform claims avoidance for client
- * Provide project closeout.

TRANSYSTEMS construction technicians will have all equipment necessary to conduct work in their possession at all times. All equipment will be well maintained, recently calibrated, and in good working order. TRANSYSTEMS will provide appropriate vehicle for requirements of project. TRANSYSTEMS will provide reliable computer with WIFI capability.

The Construction Technician has ability to inspect construction phases for roadway/structure construction projects under the supervision of the construction project manager, or other supervisory personnel. The work by the Construction Technician is predicated upon the requirement to act and make decisions independently for routine project issues and to foster partnering relationships with the **City of Greenville**, contractors, general public, or other project stakeholders. The Construction Technician will monitor the work of contractors to ensure quality control and contractor compliance of moderate complexity. The inspector will be flexible in his responsibilities and will use the direction of the engineer to incorporate plan changes and/or non-conformance of the contractor. This technician also maintains diaries and other project documentation. The technician will also provide cost documentation of pay quantities accurately and in a manner satisfactory to the **City** and in accordance with NCDOT standard procedures.

The TRANSYSTEMS Construction Manager's function is to manage the assigned elements of a construction project to assure quality of the contractor's compliance with the plans and contract documents, conduct preconstruction meetings, conduct monthly progress meetings, prepare reports, approve pay applications from contractor, manage project personnel staffing, project inspection, contract administration, provide claims avoidance, and perform project closeout.

The fees noted below include travel time and management/coordination/administration. Any direct expenses required beyond those considered customary will be reviewed with the **City of Greenville** for approval prior to expense.

Introduction:

TRANSYSTEMS will be assisting the **City of Greenville** on Construction Management, Construction Engineering and Inspection, and Construction Materials Testing services for the subject project.

Description of Work Required:

Based upon information provided by the **City of Greenville** and contract documents, construction technician(s) are needed for the inspection of the activities associated with the **2025 Citywide Stormwater Drainage Improvements Program for the City of Greenville**. Scope of work will include inspection of subgrades; compaction testing of fill soils; concrete material sampling and testing; nuclear gauge testing of aggregate base material and asphalt (core samples provided for asphalt if nuclear gauge not used); roadway grading inspection; sidewalk; ADA; resurfacing; asphalt preservation; drainage; monitoring sedimentation and erosion control devices; monitoring traffic control; monitor utility coordination, installation, conflicts and relocations; inspection of asphalt repair/laydown; storm drainage installation; signage; and pavement markings as needed for this project in accordance to minimum **City of Greenville** and NCDOT standards.

Project Administration:

- 1.1 General Administration
- 1.2 Project construction administration will be directed by the **City of Greenville (COG)**
- 1.3 TRANSYSTEMS will take direction from **COG** on schedule
- 1.4 TRANSYSTEMS will coordinate all contractor communications with **COG** Project Manager
- 1.5 TRANSYSTEMS fee is based upon on an average 40 hours/week. Actual time invoiced will be based upon time on the project and performing duties associated with **COG** project.
- 1.6 TRANSYSTEMS will observe and inspect project per project contract, plans, permits, NCDOT Standards and Specifications, and any governing **City of Greenville** specifications.

General Design:

- 2.1 Project Quantities - TRANSYSTEMS will follow design plans (and any field plan revisions) to calculate quantities and document material received in accordance with **City of Greenville** and NCDOT standard practices and will be based upon the latest version of the Standard Specifications and Project Special Provisions (2018).
- 2.2 Project Special Provisions - TRANSYSTEMS will observe and interpret the project special provisions for this project using the most current revisions in the contract document.

Construction Engineering and Inspection Services:

- 3.1 Daily Inspection - TRANSYSTEMS will observe daily operations of contractor per **City of Greenville** and NCDOT standards and specifications.
- 3.2 Project Diaries - TRANSYSTEMS will document daily operations of contractor per **City of Greenville** and NCDOT standards and specifications, and in accordance with the NCDOT Construction Manual with the approved daily report form. All needed forms will be identified prior to project to ensure correct documentation is used.
- 3.3 Materials Received - TRANSYSTEMS will record all material received per NCDOT standards specifications and in accordance with the NCDOT Construction Manual, unless otherwise noted.
- 3.4 Maintain Pay Record Book - TRANSYSTEMS will record and document pay items per **City of Greenville** and NCDOT standards, specifications, and the NCDOT Construction Manual, unless otherwise noted.
- 3.5 Coordinate Material Testing - TRANSYSTEMS will coordinate all laboratory testing with a certified testing laboratory.
- 3.6 Subgrade Evaluation - TRANSYSTEMS will observe and inspect subgrade operations, including density tests.
- 3.9 Material Testing - where appropriate and identified by scope, TRANSYSTEMS will provide field testing per NCDOT standards and specifications and within frequencies specified in the NCDOT Minimum Sampling Guide. All testing technicians assigned to this project will be certified by NCDOT.

QA/QC:

- 4.1 As part of TRANSYSTEMS' QA/QC process, our Project Manager will conduct project inspections to ensure compliance and quality of work.
- 4.2 On-Site PM Review - This will be done as needed for a documentation review
- 4.3 Coordination with job progress will be part of the QC process.
- 4.4 Monthly Progress Meetings will be held with **COG**, contractor, and other stakeholders.

Project Schedule:

5.1 TRANSSYSTEMS will coordinate the monitoring of work associated with this project when the scope and fee is approved by **COG**.

Exclusions:

6.1 If additional services are needed, this will be further negotiated.

Invoicing:

7.1 TRANSSYSTEMS will send invoices monthly.

Estimate

Our Labor Structure Fee Schedule is:

Refer to the attached NCDOT estimate spreadsheet.

Scope of work will include inspection of subgrades, compaction testing of fill soils, and either nuclear gauge testing or core samples of asphalt as needed. The TRANSSYSTEMS inspector will provide concrete testing and inspection and lab testing services through our Sub-contractor for determining the compressive strength of the concrete. We will inspect grading; storm drainage; base installation; culvert installation; pavement preservation activities; asphalt surfacing and repair; sidewalk; ADA; utility coordination and installation; pavement markings and signage; seeding; document control and project closeout.

**Construction Technician(s) – 2200 hours; Project Manager – 72 hours.
Total Cost with labor and directs - \$238,530**

Construction technician time is based on **a nine (9) month period and project management time including closeout has also been accounted for.**

STATEMENT OF FIRM BEING ON REGISTER

TRANSSYSTEMS is properly registered with the North Carolina Board of Registration for Professional Engineers and Land Surveys and carries the requested professional liability insurance coverage. We have the financial capacity to undertake this assignment and have the accounting system to identify project costs accurately.

DATE OF MOST RECENT PRE-QUALIFICATION

TRANSSYSTEMS has obtained its NCDOT Prequalification through 8/31/2025 for work codes 195 + 233. The TRANSSYSTEMS Team will comply with all applicable federal, state, and local regulations regarding equal employment opportunity.

TRANSSYSTEMS maintains Workers Compensation Insurance and General Liability Insurance coverage of \$2,000,000 for our Firm. Upon receipt of a Notice of Intent to Award (NIA) and/or Notice of Award, our team can provide Certificates of Insurance.

CONFIDENTIALITY

This proposal was prepared by TRANSSYSTEMS solely for your internal use in evaluating TRANSSYSTEMS' services. TRANSSYSTEMS considers the pricing technical and business information contained in this estimate to be proprietary and confidential. This proposal and the information contained herein shall not be used for any purpose other than as specifically stated above and shall not be disclosed to any other party without TRANSSYSTEMS' prior written consent.

Sincerely,



C. E. "Neil" Lassiter, PE
Senior Vice-President – Director of CEI

The return of this executed document will serve as the Notice to Proceed.

Accepted By:

Print: _____

Signature: _____

Date: _____

Task Order	Description	Admin Technician (\$90/hr)	Project Manager (\$140/hr)	Senior Project Engineer (\$250/hr)	Resident Project Rep IV (\$130/hr)	Resident Project Rep I (\$80/hr)	Mileage	Assumption
1.0	Contract Inspection Services				700	1500		Assume 165 hours + 20 hours OT per month per inspector(s) to address construction issues; comprehensive traffic control; perform construction materials sampling and testing; site inspection; and address public relations; serve as on site liason for city; and other contingencies.
1.1	Perform Construction Observation							
1.2	Review Construction Progress and Provide Reports							
1.3	Verify Contractor Quantities		64					
2.0	Contract Administration Services							
2.1	Preconstruction Conference							
2.2	Submittals-Document control -							
2.3	Permit Process Review							
2.4	Technical Support (office environmental, roadway, utility, materials testing and sampling, and general civil engineering)			5				
2.5	Field Visits for Technical Support/Progress Meetings/Audits			5				
2.6	Project Audits							
2.7	Utility Review							
2.8	Issues Management							
3.0	Construction Materials Laboratory Testing							
	Materials Testing and Precast Component Inspection							
4.0	Construction Closeout Services							
4.1	Final Inspection/Punch List		8					
4.2	Project Close Out							
4.3	Warrantee Review & Follow Up							
		\$0.00	\$10,080.00	\$2,500.00	\$91,000.00	\$120,000.00		

Task	Estimated Budget
Resident Project Representative Services	\$211,000
Construction Support Services	\$0
Construction Management	\$12,580
Construction Materials Testing	\$15,000
TOTAL ESTIMATED BUDGET	\$238,580



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Contract with Cherry Bekaert, LLP for Auditing Services for Fiscal Year 2024-2025
<u>Explanation:</u>	This is the City's contract for audit services with Cherry Bekaert for fiscal year 2024-2025. It is the second year of a five-year contract. The annual contract attached describes the auditing services for the Fiscal Year Ending June 30, 2025. The proposed fees for auditing services for the fiscal year ending June 30, 2025 are not to exceed \$146,000.
<u>Fiscal Note:</u>	In accordance with the firm's proposal, the cost of the audit for the Fiscal Year Ending June 30, 2025 will be \$146,000. Funds for this contract are available in the Financial Services Department's budget.
<u>Recommendation:</u>	Approve the auditing contract with Cherry Bekaert, LLP for the fiscal year ending June 30, 2025.

ATTACHMENTS

☐ [City of Greenville 6-30-25 Audit LGC.cleaned \(1\).pdf](#)

The	Governing Board
of	Primary Government Unit
and	Discretely Presented Component Unit (DPCU) (if applicable)

Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)

and	Auditor Name
	Auditor Address

Hereinafter referred to as Auditor

for	Fiscal Year Ending	Date Audit Will Be Submitted to LGC
-----	--------------------	-------------------------------------

Must be within six months of FYE

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business-type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types). The basic financial statements shall include budgetary comparison information in a budgetary comparison statement, rather than as RSI, for the General Fund and any annually budgeted Special Revenue funds.

2. At a minimum, the Auditor shall conduct the audit and render the report in accordance with GAAS. If the Governmental Unit expended \$100,000 or more in combined Federal and State financial assistance during the reporting period, the Auditor shall perform the audit in accordance with *Government Auditing Standards* (GAGAS). The Governmental Unit is subject to federal single audit requirements in accordance with Title 2 US Code of Federal Regulations Part 200 *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Subpart F (*Uniform Guidance*) and the State Single Audit Implementation Act. Currently the threshold is \$750,000 for a federal single audit and \$500,000 for a State Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit in accordance with the Uniform Guidance (§200.501) the Auditor and Governmental Unit(s) should discuss, in advance of the execution of this contract, the responsibility for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512) to ensure proper submission.

Effective for audits of fiscal years beginning on or after June 30, 2023, the LGC will allow auditors to consider whether a unit qualifies as a State low-risk auditee. Please refer to "Discussion of Single Audits in North Carolina" on the LGC's website for more information.

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.
4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC Staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2018 revision, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to *Government Auditing Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC Staff within six months of fiscal year end. If it becomes necessary to amend the audit fee or the date that the audit report will be submitted to the LGC, an amended contract along with a written explanation of the change shall be submitted to the Secretary of the LGC for approval.
7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.

For GAAS or *Government Auditing Standards* audits, if an auditor issues an AU-C §260 report, commonly referred to as "Governance Letter," LGC staff does not require the report to be submitted unless the auditor cites significant findings or issues from the audit, as defined in AU-C §260.12 - .14. This would include issues such as difficulties encountered during the audit, significant or unusual transactions, uncorrected misstatements, matters that are difficult or contentious reviewed with those charged with governance, and other significant matters. If matters identified during the audit were required to be reported as described in AU-C §260.12-.14 and were communicated in a method other than an AU-C §260 letter, the written documentation must be submitted.

8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Approval is also required for the Alternative Compliance Examination Engagement for auditing the Coronavirus State and Local Fiscal Recovery Funds expenditures as allowed by US Treasury. Approval is not required on audit contracts and invoices for system improvements and similar services of a non-auditing nature.
9. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. This also includes any progress billings [G.S. 159-34 and 115C-447]. All invoices for audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to the Auditor to present to the Governmental Unit(s) for payment. This paragraph is not applicable to contracts for audits of hospitals.
10. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC if required, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 13).
11. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC Staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC Staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.
12. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.
13. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

14. The Auditor shall submit the report of audit in PDF format to LGC Staff. For audits of units other than hospitals, the audit report should be submitted when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC. These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements and/or the compliance section, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC Staff.

15. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

16. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to hospitals). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC.

17. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and except for fees, work, and terms not related to audit services, shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 30 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

18. Special provisions should be limited. Please list any special provisions in an attachment.

19. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the primary government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

20. The contract shall be executed, pre-audited (pre-audit requirement does not apply to hospitals), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

21. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

22. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

23. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

24. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

25. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

26. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.

27. **Applicable to audits with fiscal year ends of June 30, 2020 and later.** For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and *Government Auditing Standards, 2018 Revision* (as applicable). Preparing financial statements in their entirety shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. If the Auditor cannot reduce the threats to an acceptable level, the Auditor cannot complete the audit. If the Auditor is able to reduce the threats to an acceptable level, the documentation of this determination, including the safeguards applied, must be included in the audit workpapers.

All non-attest service(s) being performed by the Auditor that are necessary to perform the audit must be identified and included in this contract. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. If the Auditor is able to identify an individual with the appropriate SKE, s/he must document and include in the audit workpapers how he/she reached that conclusion. If the Auditor determines that an individual with the appropriate SKE cannot be identified, the Auditor cannot perform both the non-attest service(s) and the audit. See "Fees for Audit Services" page of this contract to disclose the person identified as having the appropriate SKE for the Governmental Unit.

28. **Applicable to audits with fiscal year ends of June 30, 2021 and later.** The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee shall include:

- a) the description of each finding, including all material weaknesses and significant deficiencies, as found by the auditor, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;
- b) the status of the prior year audit findings;
- c) the values of Financial Performance Indicators based on information presented in the audited financial statements; and
- d) notification to the governing body that the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under 20 NCAC 03 .0508.

29. Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern. See 20 NCAC 03 .0502(c)(6).

30. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 17 for clarification).

31. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/state-and-local-government-finance-division/local-government-commission/submitting-your-audit>

32. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

33. Modifications to the language and terms contained in this contract form (LGC-205) are not allowed.

FEES FOR AUDIT SERVICES

1. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct (as applicable) and *Government Auditing Standards, 2018 Revision*. Refer to Item 27 of this contract for specific requirements. The following information must be provided by the Auditor; contracts presented to the LGC without this information will be not be approved.

Financial statements were prepared by: ☐ Auditor ☐ Governmental Unit ☐ Third Party

If applicable: Individual at Governmental Unit designated to have the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the non-attest services and accept responsibility for the results of these services:

Name:

Title and Unit / Company:

Email Address:

OR Not Applicable (Identification of SKE Individual on the LGC-205 Contract is not applicable for GAAS-only audits or audits with FYEs prior to June 30, 2020.)

2. Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8 and 13 for details on other allowable and excluded fees.


3. The audit fee information included in the table below for both the Primary Government Fees and the DPCU Fees (if applicable) should be reported as a specific dollar amount of audit fees for the year under this contract. If any language other than an amount is included here, the contract will be returned to the audit form for correction.

4. Prior to the submission of the completed audited financial report and applicable compliance reports subject to this contract, or to an amendment to this contract (if required) the Auditor may submit interim invoices for approval for services rendered under this contract to the Secretary of the LGC, not to exceed 75% of the billings for the unit's last annual audit that was submitted to the Secretary of the LGC. All invoices for services rendered in an audit engagement as defined in 20 NCAC .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law. (This paragraph not applicable to contracts and invoices associated with audits of hospitals).

Primary Government Unit	
Audit Fee (financial and compliance if applicable)	\$
Fee per Major Program (if not included above)	\$
Additional Fees Not Included Above (if applicable):	
Financial Statement Preparation (incl. notes and RSI)	\$
All Other Non-Attest Services	\$
TOTAL AMOUNT NOT TO EXCEED	\$

Discretely Presented Component Unit	
Audit Fee (financial and compliance if applicable)	\$
Fee per Major Program (if not included above)	\$
Additional Fees Not Included Above (if applicable):	
Financial Statement Preparation (incl. notes and RSI)	\$
All Other Non-Attest Services	\$
TOTAL AMOUNT NOT TO EXCEED	\$

SIGNATURE PAGE**AUDIT FIRM**

Audit Firm*	
Authorized Firm Representative (typed or printed)*	Signature* 
Date*	Email Address*

GOVERNMENTAL UNIT

Governmental Unit*	
Date Governing Board Approved Audit Contract* (Enter date in box to right)	
Mayor/Chairperson (typed or printed)*	Signature*
Date	Email Address*

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1). Not applicable to hospital contracts.

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

Sum Obligated by This Transaction:	\$
Primary Governmental Unit Finance Officer* (typed or printed)	Signature*
Date of Pre-Audit Certificate*	Email Address*

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU*	
Date DPCU Governing Board Approved Audit Contract* (Enter date in box to right)	
DPCU Chairperson (typed or printed)*	Signature*
Date*	Email Address*

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1). Not applicable to hospital contracts.

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

Sum Obligated by this Transaction:	\$
DPCU Finance Officer (typed or printed)*	Signature*
Date of Pre-Audit Certificate*	Email Address*

Remember to print this form, and obtain all
 required signatures prior to submission.



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Various Tax Refunds Greater Than \$100

Explanation:

Pursuant to North Carolina General Statute 105-381, refunds are being reported to City Council. These are refunds created by a change or release of value for City of Greenville taxes by the Pitt County Tax Assessor. Pitt County Commissioners have previously approved these refunds; they are before City Council for their approval as well. These refunds will be reported as they occur when they exceed \$100.

The Director of Financial Services reports refunds of the following taxes:

Payee	Adjustment Refunds	Amount
Ward, James Willard	Registered Motor Vehicle	587.66
Lamm, Thomas Elmo Jr	Registered Motor Vehicle	559.29
Scramlin, Jeffery Scott	Registered Motor Vehicle	505.06
Sylvester, Jeremy Keith	Registered Motor Vehicle	490.67
East Carolina Center for Sight PA	Registered Motor Vehicle	461.52
Baisey, James Blake Jr	Registered Motor Vehicle	459.47
Irmen, John Nicholas III	Registered Motor Vehicle	445.16
Sciarrino, Jospheh	Registered Motor Vehicle	375.76
Mitchum, Wendy Simpson	Registered Motor Vehicle	319.59
Greenville Utilities Commission	Registered Motor Vehicle	295.71
Chaney, Thomas Hogan	Registered Motor Vehicle	251.51
Cannon, Susan McLawhorn	Registered Motor Vehicle	229.63
Bullard, Jon Aaron	Registered Motor Vehicle	229.60
Clarke, Karen Jeanette	Registered Motor Vehicle	229.33
Beachum, Benjamin Ray	Registered Motor Vehicle	208.16
Hasselbach, Stephen Douglas	Registered Motor Vehicle	204.48
Harper, James Bennett	Registered Motor Vehicle	194.70

Everette, Joseph Christopher	Registered Motor Vehicle	181.54
Pitt & Green EMC	Registered Motor Vehicle	162.11
Hazboun, Stacia Fuad	Registered Motor Vehicle	160.99
Edwards & Edwards LLP	Registered Motor Vehicle	154.26
Cash, Ralph Lee Jr	Registered Motor Vehicle	147.01
Blue, Taren Nevada Mckay	Registered Motor Vehicle	145.46
Stepps, Ronnie Mitchell	Registered Motor Vehicle	141.52
Caldwell, John William	Registered Motor Vehicle	141.22
Haggard, Jamie Michelle	Registered Motor Vehicle	133.58
Colson, Jerry Rufus	Registered Motor Vehicle	127.33
Lane, Linda West	Registered Motor Vehicle	126.05
Jones, Darnell Justin	Registered Motor Vehicle	124.28
Gillispie, Aaron Donnell	Registered Motor Vehicle	115.86
Bagley, Meredith Bunch	Registered Motor Vehicle	107.13
Powell, James Emmett Jr	Registered Motor Vehicle	102.01
Ibarra, Silvia Estela	Registered Motor Vehicle	100.91
Harris, Robert Lee	Individual Property Taxes	188.87
Journey, Cynthia Potts	Individual Property Taxes	138.89

Fiscal Note: The total amount refunded is \$8,544.32.

Recommendation: Approval of taxes refunded by City Council.



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Construction Contract Award to Trader Construction Company for the Town Common Bulkhead and Esplanade Project

Explanation: The existing bulkhead at the Town Common, constructed approximately 57 years ago, has reached the end of its serviceable life. This structure is a vital component of the park's infrastructure, protecting the Town Common from erosion and flooding caused by the Tar River. To address its deterioration, the City partnered with Moffatt & Nichol to develop the design and secure necessary permits for a full replacement of both the bulkhead and the esplanade.

The proposed improvements aim to enhance flood protection for the park while also significantly enriching the experience of park visitors. As part of the South Tar River Greenway and the East Coast Greenway, the project will feature an attractive, multi-use path that provides a seamless east-to-west connection through the park. Additionally, the project includes upgrades to the amphitheater's loading zone, improving access for a broader range of performers vehicles and equipment.

To move the project forward, staff issued two consecutive advertisements for construction bids on February 24 and March 25. A single bid was received and opened on April 15 from Trader Construction Company, totaling \$14,337,500.00, including all bid alternates. This amount falls within the Engineer's estimated probable cost for construction. Trader Construction Company has a proven track record with the City, having successfully completed prior projects, and is currently performing well under other existing City contracts. The construction contract allows for a duration of 400 days.

Fiscal Note: This project is proposed to be financed using \$14,000,000 in debt service and the \$5,000,000 previously received from the State of North Carolina.

Recommendation: Award the construction contract in the amount of \$14,337,500.00 to Trader Construction Company for the Town Common Bulkhead and Esplanade Project.

ATTACHMENTS

☐ **Construction Contract Town Common Bulkhead.pdf**

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

This Agreement is by and between the City of Greenville ("Owner") and **Trader Construction Company** ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: See section 01 11 00 – Summary of Work from the construction documents.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Greenville Town Common & Esplanade Project.

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained Moffatt & Nichol ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by Engineer.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.03 *Contract Times: Days*
- A. The Work will be substantially complete within 400 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.
- 4.04 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time.

Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner \$1000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1000 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, a lump sum of **\$14,337,500.00**.
All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
 - B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

- 6.01 *Submittal and Processing of Payments*
- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 6.02 *Progress Payments; Retainage*
- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the 5th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments

previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. 95 percent of the value of the Work completed (with the balance being retainage).

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
3. General Conditions.
4. Supplementary Conditions.
5. Specifications as listed in the table of contents of the project manual (copy of list attached).
6. Drawings listed on the attached sheet index.
7. Addenda (numbers 1, inclusive) and Summary of Changes dated March 24, 2025.
9. Exhibits to this Agreement (enumerated as follows):
 - a. Town Common Civic Center Bulkhead Geotechnical Engineer Report
 - b. Town Common Park Bulkhead and Esplanade Geotechnical Engineer Report (not attached)
 - c. DWR 401 Authorization Certificate with Additional Conditions
 - d. USACE Nationwide Permit 3
 - e. USACE Regional General Permit
 - f. Contractor's bid
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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- d. Field Orders.
- e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

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

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

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

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

This Agreement will be effective on **[indicate date on which Contract becomes effective]** (which is the Effective Date of the Contract).

Owner:

City of Greenville

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

P.J. Connelly

(typed or printed)

Title:

Mayor

(typed or printed)

Attest:

(individual's signature)

Title:

City Clerk

(typed or printed)

Address for giving notices:

Greenville City Hall

200 West Fifth Street

Greenville, NC 27834

Designated Representative:

Name: Mark Nottingham

(typed or printed)

Title: City Projects and Development Manager

(typed or printed)

Address:

Jaycee Park

2000 Cedar Ln

Greenville, NC 27858

Phone:

Email:

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

Contractor:

Trader Construction Comany

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Carl Huddle

(typed or printed)

Title:

President

(typed or printed)

(If **[Type of Entity]** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Trader Construction Co.

PO Drawer 1578

New Bern, NC 28563

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).

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Modified to include RD edits from RUS Bulletin 1780-26 (5/24/2023, with no changes resulting from 5/10/24 edition).

APPROVED AS TO FORM:

BY: _____
City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: _____ **DATE:** _____
Jacob A. Joyner, Director of Financial Services

ACCOUNT NUMBER:

PROJECT CODE (IF APPLICABLE):

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 Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

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requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *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.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

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

4.04 *Progress Schedule*

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

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is 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; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *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 maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

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

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) 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) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

7.09 *Permits*

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

7.10 *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.

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

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will 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.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

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

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will 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 Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will 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, which 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 will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of 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, 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.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. 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.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

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

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.
- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. 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.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

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

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

No Supplementary Conditions in this Article.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

No Supplementary Conditions in this Article.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.02 *Starting the Work*

SC-4.02 Add the following sentence immediately at the end of Paragraph 4.02.A.:

"Portions of the site will not be available until after July 10th."

ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

5.02 *Use of Site and Other Areas*

SC-5.02 Add the following new paragraphs immediately after Paragraph 5.02.A.2:

3. The following table lists the dates known to the Owner in which availability of site will be restricted:

Date(s)	Restricted Areas
June 16 th – July 2 nd , July 5 th – July 10 th	Middle and West Sections of Park
June 19 th , July 3 rd – July 4 th , July 10 th	All of Town Common Park

5.03 *Subsurface and Physical Conditions*

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Town Common Civic Center and Bulkhead Geotechnical Engineer Report	February 11, 2022	Boring Log, full site, at page 30 Bulkhead Design Parameters, page 13
Town Common Park Bulkhead and Esplanade Geotechnical Engineer Report	May 16, 2024	Slope Stability, Page 16 Soil Bond Stress Values, Page 5

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
No such drawings	N/A	N/A

5.06 Hazardous Environmental Conditions

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
No such reports	N/A	N/A

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
No such drawings	N/A	N/A

ARTICLE 6—BONDS AND INSURANCE

6.03 Contractor's Insurance

Refer to the Instructions to Bidders document include in the bid documents for insurance requirements.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.03 Labor; Working Hours

SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "...all Work at the Site must be performed during regular working hours, all days of the week. Contractor will not perform Work on any legal holiday."

ARTICLE 8—2. OWNER'S EXEMPTION DOES NOT APPLY TO CONSTRUCTION TOOLS, MACHINERY, EQUIPMENT, OR OTHER PROPERTY PURCHASED BY OR LEASED BY CONTRACTOR, OR TO SUPPLIES OR MATERIALS NOT INCORPORATED INTO THE WORK OTHER WORK AT THE SITE

No Supplementary Conditions in this Article.

ARTICLE 9—OWNER'S RESPONSIBILITIES

No Supplementary Conditions in this Article.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

No Supplementary Conditions in this Article.

ARTICLE 11—CHANGES TO THE CONTRACT

No Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No Supplementary Conditions in this Article.

ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

No Supplementary Conditions in this Article.

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

14.02 Tests, Inspections, and Approvals

SC-14.02 Replace Paragraph 14.02.B with the following paragraph:

- B. Contractor shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.03 Substantial Completion

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

No Supplementary Conditions in this Article.

ARTICLE 18—MISCELLANEOUS

No Supplementary Conditions in this Article.

SPECIFICATION CERTIFICATIONS

The professional identified below is responsible for performing certain professional services defined in the Contract Documents and is the author of the following Specification Sections for this project:

TECHINICAL SPECIFICATIONS:

00 01 15	M&N	List of Drawings
01 11 00	M&N	Summary of Work
01 14 00	M&N	Work Restrictions
01 33 00	M&N	Submittals
01 45 35	M&N	Special Inspections
02 41 00	M&N	Demolition
03 30 00	M&N	Cast-in-Place Concrete
05 50 13	M&N	Miscellaneous Metal Fabrications
06 13 33	M&N	Timberwork
09 97 13	M&N	Coating of Steel Waterfront Structures
31 46 16	M&N	Metal Sheet Piling
31 62 16	M&N	Steel Pipe Piles
31 62 19	M&N	Timber Marine Piles
31 68 13	M&N	Soil Anchors
35 51 14	M&N	Aluminum Floating Dock for Transient Facility

Firm: Moffatt & Nichol

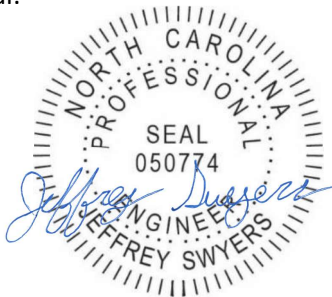
Name: Jeffrey M. Swyers

Title: Structural Engineer

NC License No.: 050774

NC Firm License No.: F-0105

Seal:



SPECIFICATION CERTIFICATIONS

The professional identified below is responsible for performing certain professional services defined in the Contract Documents and is the author of the following Specification Sections for this project:

TECHINICAL SPECIFICATIONS:

02 20 00	TEG	Temporary Tree and Plant Protection
32 14 13	TEG	Precast Concrete Unit Pavers
32 31 00	TEG	Woven Wire Fence
32 40 00	TEG	Manufactured Site Furnishings
32 90 00	TEG	Planting & Topsoil
32 92 20	TEG	Fertilizer Seeding Mulch & Sod

Firm: The East Group

Name: Sharon Rhue

Title: Senior Landscape Architect/
Project Manager

NC License No.: 1840

NC Firm License No.: C-427

Seal:



The professional identified below is responsible for performing certain professional services defined in the Contract Documents and is the author of the following Specification Sections for this project:

TECHINICAL SPECIFICATIONS:

31 00 00	TEG	Earthwork
31 10 00	TEG	Site Clearing
31 25 00	TEG	Erosion and Pollution Control
31 80 00	TEG	Clean up and Seeding
32 12 00	TEG	Asphalt Paving
32 13 00	TEG	Concrete Pavement
33 10 00	TEG	Water Distribution
33 40 00	TEG	Storm Drainage

Firm: The East Group

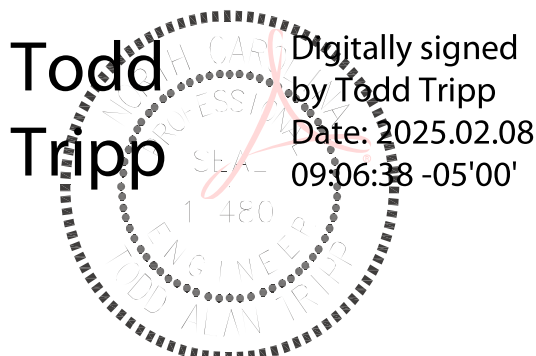
Name: Todd A. Tripp

Title: Senior Civil Engineer/
Project Manager

NC License No.: 017480

NC Firm License No.: C-0206

Seal:



SPECIFICATION CERTIFICATIONS

The professional identified below is responsible for performing certain professional services defined in the Contract Documents and is the author of the following Specification Sections for this project:

TECHINICAL SPECIFICATIONS:

00 01 15	M&N	List of Drawings
01 11 00	M&N	Summary of Work
01 14 00	M&N	Work Restrictions
01 33 00	M&N	Submittals
01 45 35	M&N	Special Inspections
02 41 00	M&N	Demolition
03 30 00	M&N	Cast-in-Place Concrete
05 50 13	M&N	Miscellaneous Metal Fabrications
06 13 33	M&N	Timberwork
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31 62 19	M&N	Timber Marine Piles
31 68 13	M&N	Soil Anchors
35 51 14	M&N	Aluminum Floating Dock for Transient Facility

Firm: Moffatt & Nichol

Name: David A. Wills Jr.

Title: Electrical Engineer

NC License No.: 044930

NC Firm License No.: F-0105

Seal:



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SECTION A:

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00 21 13	Instructions to Bidders
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Supplementary General Conditions of the Contract	
Technical Specifications Certification	

TECHNICAL SPECIFICATIONS:

00 01 15	M&N	List of Drawings
01 11 00	M&N	Summary of Work
01 14 00	M&N	Work Restrictions
01 33 00	M&N	Submittals
01 45 35	M&N	Special Inspections
02 20 00	TEG	Temporary Tree and Plant Protection
02 41 00	M&N	Demolition
03 30 00	M&N	Cast-in-Place Concrete
05 50 13	M&N	Miscellaneous Metal Fabrications
06 13 33	M&N	Timberwork
09 97 13	M&N	Coating of Steel Waterfront Structures
26 20 00	M&N	Electrical Distribution System
26 56 00	M&N	Exterior Lighting
31 00 00	TEG	Earthwork
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31 25 00	TEG	Erosion and Pollution Control
31 46 16	M&N	Metal Sheet Piling
31 62 16	M&N	Steel Pipe Piles
31 62 19	M&N	Timber Marine Piles
31 68 13	M&N	Soil Anchors
31 80 00	TEG	Clean up and Seeding
32 12 00	TEG	Asphalt Paving
32 13 00	TEG	Concrete Pavement
32 14 13	TEG	Precast Concrete Unit Pavers
32 31 00	TEG	Woven Wire Fence
32 40 00	TEG	Manufactured Site Furnishings
32 90 00	TEG	Planting & Topsoil
32 92 20	TEG	Fertilizer Seeding Mulch & Sod
33 10 00	TEG	Water Distribution
33 40 00	TEG	Storm Drainage
35 51 14	M&N	Aluminum Floating Dock for Transient Facility

SECTION B:

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Form of Bid Bond

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Identification of Minority/Women Business Participation

Affidavit A – Listing of Good Faith Efforts

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- Shore Drive Project Details for Retaining Wall, Esplanade, Etc.
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- Town Common Civic Center and Bulkhead Geotechnical Engineer Report
Terracon Consultants, Inc.
Report Dated February 11, 2022
- Town Common Park Bulkhead and Esplanade Geotechnical Engineer Report
Terracon Consultants, Inc.
Report Dated May 16, 2024

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DWR #20240417 v2
Dated January 8, 2025
- USACE – Nationwide Permit 3 - Maintenance
Dated February 25, 2022
- USACE – Regional General Permit (RGP)
Permit #197800056
Dated January 1, 2022

ADDENDUM NO. 1
For
City of Greenville (City)
Greenville Town Common & Esplanade Project
April 7, 2025

GENERAL:

1. This Addendum shall supplement, amend, and become a part of the Bid Documents. All Bids and the Construction Contract shall be based on these modifications.
2. Bidders shall acknowledge the receipt of this Addendum on their Form of Proposal.

SPECIFICATIONS:

No revisions to the specifications in this addendum.

DRAWINGS:

No revisions to the drawings in this addendum.

BIDDER'S QUESTIONS:

The deadline for prospective Bidders to submit written questions to the Designer for response was established in the Advertisement for Bidders as **April 3, 2025 at 5:00 pm**.

The following Designer responses to Bidder's written questions received by the deadline are included with this Addendum and are provided for information/clarification purposes only:

1. *Would an 8ft wide floating dock be an acceptable substitute for the 6ft wide dock?*
 - A. **Response:** An 8-foot-wide floating dock may be approved after contract award if it meets floodplain requirements and is consistent with US Army Corps of Engineers navigation assessment. Propose as advertised.
2. *Is the stiff-arm system a requirement? Typically, floating docks are anchored by a multi-piling system within the framework of the dock, or they are attached with exterior pile hoops.*
 - A. **Response:** The stiff-arm system is required for this project.
3. *Can M&N provide a detail for the SS Bands at the tops of all piles?*
 - A. **Response:** Detail to be provided by the contractor for approval.

4. *Will an alternate sheet pile section of AZ-20 800 (ASTM A-572 Gr. 60) be an acceptable substitute?*
 - A. **Response:** The proposed sheet pile section AZ20-800 may be approved after award but cannot be approved at this time. Variations may be approved after the construction contract award. For approval, the contractor will be responsible for proposing an alternate pile layout with the proposed alternate sheet pile width for review and approval. Propose as advertised.
5. *Pile schedule calls out 10" piles but the timber pile spec calls out ASTM D25 with 10" diameter at 3ft from the butt. ASTM D25 is 12" correct?*
 - A. **Response:** The project piles do not follow the Class A and B classifications of the 1937 edition of ASTM D25. 10" pile is the correct size.
6. *Please confirm the requirement for timber treatment 2.5ACZA pcf. This is an unusual and atypical treatment for the Southeast. Would CAC in UC4A or UC4B be an acceptable alternative?*
 - A. **Response:** Refer to paragraph 2.1 of specification section 31 62 19 – Timber Piles. The Current treatment is CCA with 0.8 pcf retention.
7. *What is the freeboard height of the floating dock?*
 - A. **Response:** For freeboard height please refer to 2.1G of specification Section 35 51 14.
8. *I have some more questions about the site furnishings. Regarding the details, some of the furnishings will have to be custom-built. Do we still need to include those in our estimate, and if so, is there somewhere where you already have specs for them? Or something similar?*
 - A. **Response:** All site furnishings should be included in the estimate. Please refer to spec Section 32 40 00 – Manufactured Site Furnishings.
9. *I also have a question about the pedestrian vs. vehicular pavers. In the plans, it's hard to tell the difference between the two, and I'm assuming the paving pattern is to mix them, so that they have a slight transition from one to the other. Could you specify which is which?*
 - A. **Response:** South of the decorative trench drain, all pavers are to be vehicular grade for both of the east and west plazas. North of the decorative trench drain is pedestrian grade pavers for both plazas.

END OF ADDENDUM NO. 1

SUMMARY OF CHANGES
For
City of Greenville (City)
Greenville Town Common & Esplanade Project
March 24, 2025

GENERAL:

1. This Summary of Changes document details the changes between the Issued for Bid set dated February 14th, 2025 and the current bid set dated March 24, 2025. This document also includes the bidders questions from the previous postings' addendums.

SPECIFICATIONS:

The following revisions were made to the specification sections of the Bid Documents:

1. Section 00 11 15 “Advertisement for Bids”: Removed the Prebid meeting as well as the mandatory attendance requirement for the previous Prebid meeting from the section. Added deadline for contractors' questions as well as engineers' responses.
2. Specification Section 00 01 15 “List of Drawings”: Updated sheet index.
3. Specification Section 03 30 00 “Cast-in-Place Concrete”: Modified table in Paragraph 2.2.A with the addition of exposure class W1.
4. Section 31 62 19 – Timber Marine Piles: Modified Paragraph 2.1.B.1 by replacing “2.50” with “0.8” for the minimum preservative retention in pounds per cubic foot.
5. Agreement Between Owner and Contractor For Construction Contract: Modified Paragraph 4.04.1 and 4.04.2 where [Number] is shown and replaced with 1000.
6. Section B – Form of Proposal: Replaced to include proper space for bidders to write down amounts.
7. Section B – Form of Bid Bond: The appropriate third page was inserted in the correct location, preceding the “Agreement Between Owner and Contractor for Construction Contract” document.

DRAWINGS:

The following revisions were made to the drawings sections of the Bid Documents:

1. All Plan Sheets: Adjusted east end of vehicle path to allow for emergency vehicles to turn
2. Sheet CG103: DI-7 and grate was added south of the amphitheater.
3. Sheet S-001: Adjusted minimum preservative retention from 2.5 to 0.8 pounds per cubic foot in the Timber Construction notes.
4. Sheets ST101 to ST104: Bulkhead ladder locations were incorporated.
5. Sheets S-402 to S-407: Widened swing arbor landing to give appropriate space for swing arbor.
6. Sheet S-504: Adjusted Timber Stair detail and ramp detail on S-504.
7. Sheet S-602: Pipe Pile Schedule is updated.
8. Sheet E-104: Moved Light Post P35 to the west.

BIDDER'S QUESTIONS:

The deadline for prospective Bidders to submit written questions to the Designer for response is established in the Advertisement for Bids as **April 3, 2025 at 5:00 pm**.

The following Designer responses to Bidder's written questions received to date are included with this Summary of Changes and are provided for information/clarification purposes only:

1. *The plans show 5 paver types with varying sizes, where in the plans does it shows where the different sizes go?*
 - A. **Response:** The paving pattern for the plazas can be found on sheets CS505 and CS506. There is a faint "dot" hatch in the area that calls for light vehicular pavers. There is some degree of randomness in the way the pavers transition from the smaller size to the larger size. The owner representative will need to approve a mockup (about 10 x 25) prior to permanent install, and can be on hand to assist in coming up with a framework to help guide the install of the transitioning pavers. The crosswalk paving pattern is on D2/CS501. The crosswalk calls for 4x8 vehicular grade pavers. The color and style of these pavers will match the plaza pavers.

2. *The plans show a bituminous setting bed. Would you like us to provide a price for a sand setting bed instead? The bituminous setting bed is not as cost effective as sand setting bed.*
 - A. **Response:** The bituminous setting bed is specified in this particular area because the area floods every few years. Please proceed in pricing a bituminous setting bed for the plazas. There are also pavers where the multi-use path crosses the drive to the parking lot on the east end. These pavers will be set in sand.
3. *The specification on the trench drain grating is a little confusing. Detail A1 on CG-501, is a cast iron grate. But another place (Detail E2 on CG-501) it mentions stainless steel. A stainless steel metal grate is probably available. But for a street scape application, a cast iron or ductile iron product would serve you better. Can you clarify?*
 - A. **Response:** Detail A1 on CG501 is correct with the cast iron callout. Detail E2 note that calls for stainless steel has been revised and moving forward to call out a cast iron grate.
4. *Can the City post CAD files on bid solicitation page?*
 - A. **Response:** The base cad file can be obtained from Moffatt & Nichol by filling out the attached electronic document release form and emailing your request and completed form to Jeff Swyers (jswyers@moffattnichol.com) at Moffatt & Nichol.
5. *Past projects have not considered bulkhead repair (new sheets constructed directly in front of old sheets) as "in-water work". What is defined as "in-water work"?*
 - A. **Response:** The permitting conditions specify work that enters the stream and streambed as "in-water work". The streambed limit is defined as any area waterward of the highwater line. This definition would include but is not limited to the sheet pile installation.
6. *Is the concrete cap installation considered "in-water work"?*
 - A. **Response:** The concrete cap would not be considered "in-water work" and can be constructed outside of the permit window.
7. *Will the project duration of 400 days be extended?*
 - A. **Response:** The project duration is not anticipated to be extended.
8. *Can the City confirm the liquidated damages associated with this contract?*
 - A. **Response:** Liquidated damages are addressed in the *Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)*.
9. *The landscape details and specifications don't match up on the site furnishings part of the documents. The specs call for a 14'w x 30'l x 10'-2"h Metal Pergola, whereas the*

details call for a 10'-6"w x 30'l x 10'h Metal Pergola. Which do we choose to use for our bid?

A. **Response:** The Pergola should follow the specs dimensions of 14' wide x 30'-6" long x 10'-2" high.

10. *Unilock (the paver manufacturer) does not produce the Premier 24x36 paver. Would a 24"x24" paver be acceptable in those areas?*

A. **Response:** Contractors shall price for the 24"x24"x2-3/4" thick pedestrian pavers.

11. *The specifications show different quantities for the Backed and Backless Benches with Armrest than the drawings. Which quantities are correct?*

A. **Response:** There are 7 backed benches (13 with Bid Additives) and 5 backless benches

END OF SUMMARY OF CHANGES

Title VI of the Civil Rights Act of 1964
Nondiscrimination Provisions, Appendices A & E.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, creed (religion), low-income, limited English proficiency, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or

the USDOT to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

- I. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority

populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq);
- Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity).



Geotechnical Engineering Report

**Town Common Civic Center and Bulkhead
Greenville, Pitt County, North Carolina**

February 11, 2022

Terracon Project No. 72215104



Prepared for:

The East Group, P.A.
Greenville, NC

Prepared by:

Terracon Consultants, Inc.
Greenville, North Carolina



February 11, 2022

The East Group, P.A.
324 Evans Street
Greenville, NC 27858



Attn: Ms. Myriah Shewchuk, PLA / Senior Landscape Architect
P: (252) 758-3746
E: myriah.shewchuk@eastgroup.com

Re: Geotechnical Engineering Report
Town Common Civic Center and Bulkhead
105 E 1st Street
Greenville, Pitt County, North Carolina
Terracon Project No. 72215104

Dear Ms. Shewchuk:

We have completed the Geotechnical Engineering services for the above referenced project. This study was performed in general accordance with Terracon Proposal No. P71215104 dated October 19, 2021. This report presents the findings of the subsurface exploration and provides geotechnical recommendations concerning earthwork and the design and construction of foundations and floor slabs for the proposed project.

We appreciate the opportunity to be of service to you on this project. If you have any questions concerning this report or if we may be of further service, please contact us.

Sincerely,

Terracon Consultants, Inc.

Branson Rogers
Geotechnical Professional

Andrew J. Gliniak, PE
Project Engineer
Registered NC 042183

James (Jim) Hoskins, III, PE
Sr. Principal / Office Manager (Greensboro, NC)



REPORT TOPICS

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Note: This report was originally delivered in a web-based format. **Orange Bold** text in the report indicates a referenced section heading. The PDF version also includes hyperlinks which direct the reader to that section and clicking on the **GeoReport** logo will bring you back to this page. For more interactive features, please view your project online at client.terracon.com.

ATTACHMENTS

EXPLORATION AND TESTING PROCEDURES
PHOTOGRAPHY LOG
SITE LOCATION AND EXPLORATION PLANS
EXPLORATION RESULTS
SUPPORTING INFORMATION

Note: Refer to each individual Attachment for a listing of contents.

REPORT SUMMARY

Topic ¹	Overview Statement ²
Project Description	The project includes a proposed civic building, a reconstruction of the existing amphitheater, and the repair and/or replacement of the existing bulkhead.
Geotechnical Characterization	<p>The subsurface exploration encountered fill to depths of 13 feet at all exploration locations underlain by varying loose to very dense sand and soft to stiff clay.</p> <p>Groundwater is anticipated at a depth of approximately 10 to 14 feet below existing grades. However, groundwater can fluctuate to/above the surface due to the river.</p>
Geotechnical Overview	<p>At depths of 28 feet to 38 feet below the existing ground surface, very dense sand will likely be encountered that could impede sheet pile driving.</p> <p>The fill encountered during our exploration appears suitable for foundation and floor slab support after the recommended Earthwork. However, there is an inherent risk for the owner that compressible fill or unsuitable material within or buried by the fill. This risk of unforeseen conditions cannot be eliminated without completely removing the existing fill but can be reduced by following the recommendations contained in this report.</p> <p>The building can be supported by shallow foundations after vibratory rolling the subgrade and Earthwork.</p> <p>Underground utilities that will not remain in-service within the proposed building footprint should be abandoned by removal and replacement with compacted fill during earthwork. Groundwater encountered in excavations should be removed until the excavations are backfilled.</p>
Earthwork	After stripping, the exposed subgrade soils in the building footprint should be densified in place using a medium weight vibratory roller. Static rolling should be performed within 30 feet of the existing building to prevent damage due to excess vibrations. The purpose of the rolling is to densify the exposed subgrade soils for floor slab and to potentially improve the foundation bearing soils.
Shallow Foundations	<p>Allowable bearing pressure = 1,000 psf for civic building = 2,000 psf for amphitheater</p> <p>Expected settlements: < 1-inch total, <1/2 inch differential settlement</p>
General Comments	This section contains important information about the limitations of this geotechnical engineering report.
<p>1. If the reader is reviewing this report as a pdf, the topics above can be used to access the appropriate section of the report by simply clicking on the topic itself.</p> <p>2. This summary is for convenience only. It should be used in conjunction with the entire report for design purposes.</p>	

Geotechnical Engineering Report
Town Common Civic Center and Bulkhead
105 E 1st Street
Greenville, Pitt County, North Carolina
Terracon Project No. 72215104
February 11, 2022

INTRODUCTION

This report presents the results of our subsurface exploration and geotechnical engineering services performed for the proposed additions to be located at 105 E 1st Street in Greenville, Pitt County, North Carolina. The purpose of these services is to provide information and geotechnical engineering recommendations relative to:

- Subsurface soil conditions
- Groundwater conditions
- Site preparation and earthwork
- Excavation considerations
- Foundation design and construction
- Seismic site classification
- Floor slab design and construction
- Retaining wall design parameters

The geotechnical engineering Scope of Services for this project included the advancement of 10 test borings to depths of approximately 20 feet to 75 feet below existing site grades.

Maps showing the site and boring locations are shown in the **Site Location** and **Exploration Plan** sections respectively. The results of the laboratory testing performed on soil samples obtained from the site during the field exploration are included on the boring logs and as separate graphs in the **Exploration Results** section.

SITE CONDITIONS

The following description of site conditions is derived from our site visit in association with the field exploration and our review of publicly available geologic and topographic maps.

Item	Description
Parcel Information	The project is located at the Town Commons Park on 105 E 1st Street in Greenville, Pitt County, North Carolina. See Site Location .
Coordinates	N 35.6159°, W 77.3690° (approximate)

Geotechnical Engineering Report

Town Common Civic Center and Bulkhead ■ Greenville, Pitt County, North Carolina
February 11, 2022 ■ Terracon Project No. 72215104



Item	Description
Existing Improvements	Town Common Park is developed with an amphitheater, playground, boat launch, and various utilities running through the site. There is an existing bulkhead, approximately 1,250 feet, that borders the river at the north end of the park.
Current Ground Cover	Grass and sidewalks around existing development.
Existing Topography	Sloping towards the north to the adjacent Tar River. Elevations across the site range from 17 feet to 25 feet MSL. Elevations provided by Google Earth.

We also collected photographs at the time of our field exploration program. Representative photos are provided in our [Photography Log](#).

PROJECT DESCRIPTION

Our final understanding of the project conditions is as follows:

Item	Description
Information Provided	<p>An initial email communication on August 25, 2021 requesting budgetary pricing and subsequent emails requesting a proposal for a geotechnical investigation. Subsequent email communication since the initial request further defined proposed building construction.</p> <p>Email communication on October 14, 2021 provided an updated scope for the geotechnical study.</p>
Project Description	<ul style="list-style-type: none">■ A proposed civic building. The project is in preliminary stages, and the design is evolving. The size of the proposed development is undetermined, but will be approximately 6,000 SF to 12,000 SF.■ A proposed reconstruction of the existing amphitheater.■ A proposed repair and/or replacement of the existing bulkhead along the river's edge.
Proposed Structures	<p>The project includes a multi-story civic building, likely to be two stories. Due to the proximity of the river, the building may be on piles.</p> <p>The structure for the amphitheater construction is unknown.</p> <p>A repair and/or a replacement of the river's bulkhead. The bulkhead could require additional sheet piles.</p>
Building Construction	<p>The civic building design is currently evolving. The building will be of steel framed construction with metal-stud walls with concrete slab on grade and an elevated concrete deck.</p> <p>The amphitheater is assumed to be steel framed supported by an anticipated shallow foundation system with a slab-on-grade floor system</p>

Item	Description
Finished Floor Elevation	26 feet MSL, two feet above the flood plane
Maximum Loads (Provided by Structural)	<ul style="list-style-type: none"> Columns: Up to 50 kips to 125 kips assumed Walls: Up to 2 kips per linear foot (klf) assumed Slabs: 100 pounds per square foot (psf) assumed
Grading/Slopes	Up to 2 feet of fill is assumed to be required to develop final grade.
Below-Grade Structures	None
Stormwater Management	The site is assumed to utilize existing stormwater drains.
Estimated Start of Construction	Unknown

GEOTECHNICAL CHARACTERIZATION

Geology

The project site is located in the Coastal Plain Physiographic Province. The Coastal Plain soils consist mainly of marine sediments that were deposited during successive periods of fluctuating sea level and moving shoreline. The soils include sands, silts, and clays with irregular deposits of shells, which are typical of those lain down in a shallow sloping sea bottom. Recent alluvial sands, silts, and clays are typically present near rivers and creeks.

According to USGS Mineral Resources On-Line Spatial Data based on the 1998 digital equivalent of the 1985 Geologic Map of North Carolina updated in 1998, the site is mapped within the Yorktown Formation and Duplin Formation, Undivided (Tertiary).

Subsurface Profile

We have developed a general characterization of the subsurface conditions based upon our review of the subsurface exploration, laboratory data, geologic setting and our understanding of the project. This characterization, termed GeoModel, forms the basis of our geotechnical calculations and evaluation of site preparation and foundation options. Conditions encountered at each exploration point are indicated on the individual logs. The individual logs can be found in the **Exploration Results** section and the GeoModel can be found in the **Figures** section of this report.

As part of our analyses, we identified the following model layers within the subsurface profile. For a more detailed view of the model layer depths at each boring location, refer to the GeoModel.

Model Layer	Layer Name	General Description
1	Fill	Fill consisting of silty sand, poorly graded sand, clayey sand, lean clay, and sandy lean clay.

2	Denser soil	Loose to very dense sand and medium stiff to stiff clay.
3	Looser soil	Very loose sand and very soft to soft clay.

Groundwater

Mud rotary drilling techniques were used to advance the borings which can obscure the detection of water levels. Groundwater was measured at depths between 10 feet to 14 feet below the existing ground surface after completion. Groundwater is estimated at depths of 10 feet to 14 feet below the existing surface based on the moisture condition of the soil samples, cave in-depths, and measured water levels. However, the area is prone to flooding from the river and groundwater levels can approach the surface due to the river.

The groundwater level can change due to seasonal variations in the amount of rainfall, runoff, river stage, and other factors not evident at the time the exploration was performed. It is not unusual for ground water to be within a few feet of the ground surface during times of the year in this region. The possibility of groundwater level fluctuations should be considered when developing the design and construction plans for the project.

Our scope of work did not include the determination of the seasonal high-water table (SHWT) and infiltration rates for any proposed stormwater areas.

GEOTECHNICAL OVERVIEW

The subsurface exploration encountered fill to depths of 13 feet at all exploration locations underlain by varying loose to very dense sand and soft to stiff clay. At depths of 28 feet to 38 feet below the surface will likely encounter very dense sand that could impede sheet pile driving.

The fill encountered during our exploration appears suitable for foundation and floor slab support after the recommended **Earthwork**. However, there is an inherent risk for the owner that compressible fill or unsuitable material within or buried by the fill. This risk of unforeseen conditions cannot be eliminated without completely removing the existing fill but can be reduced by following the recommendations contained in this report.

After stripping topsoil and once any areas of cut are excavated to proposed subgrade elevation, the exposed subgrade soils in the building footprints should be densified in place using a medium weight vibratory roller. Static rolling should be used within 30 feet of existing structures. The purpose of the rolling is to densify the exposed subgrade soils for floor slab support and to potentially improve the foundation bearing soils.

Following the recommended **Earthwork**, the civic building and the amphitheater can be supported on shallow foundations bearing on approved existing soils or structural fill compacted as

recommended and sized for a maximum net allowable soil bearing pressure of 1,000 psf and 2000 psf, respectively. The **Shallow Foundations** section addresses support of the building bearing on densified existing natural soils or structural fill. The **Floor Slabs** section addresses slab-on-grade support of the building.

The **General Comments** section provides an understanding of the report limitations.

EARTHWORK

Earthwork is anticipated to include excavations, densification, and fill placement. The following sections provide recommendations for use in the preparation of specifications for the work. Recommendations include critical quality criteria, as necessary, to render the site in the state considered in our geotechnical engineering evaluation for foundations and floor slabs. Grading for the structure should incorporate the limits of the proposed structure plus 5 feet beyond proposed perimeter building walls and any exterior columns.

Site Preparation

Site preparation should begin with the surface vegetation, topsoil, and all associated utilities that will not remain in-service in the proposed building footprint. Stone base, if encountered, can remain in-place if it withstands proofrolling. Based on site observations during the drilling process, topsoil and surface vegetation in the proposed building footprint areas should be stripped to a depth of approximately 6 inches. Topsoil may be reused in areas of the site to be landscaped but should not be used as structural fill or backfill.

After stripping and removing topsoil and once any areas of cut have been excavated to proposed subgrade elevation, the exposed subgrade soils in the building footprints should be densified in place using a medium weight vibratory roller. Static rolling should be performed within 30 feet of the existing structures to prevent damage due to excess vibrations. The purpose of rolling is to densify the exposed subgrade soils for floor slab support and to potentially improve the foundation bearing soils. The roller should make at least six passes across the site, with the second set of three passes perpendicular to the first set of three passes. If water is brought to the surface by rolling, the operation should be discontinued until the water subsides. Rolling should be completed during dry weather. Static rolling and additional repairs should be anticipated for areas too wet for vibratory rolling.

After the vibratory rolling, pore pressures should be allowed to dissipate for a minimum of 16 hours. After the waiting period, proofrolling should be performed on the exposed subgrade soils in areas to receive fill or at the subgrade elevation with a loaded, tandem-axle dump truck (15 to 20-ton total vehicle weight) or similar rubber-tired construction equipment. Proofrolling is recommended as a means of detecting areas of soft or unstable subgrade soils. The proofrolling should be performed during a period of dry weather to avoid degrading an otherwise suitable

subgrade. The proofrolling operations should be observed the Geotechnical Engineer. Subgrade soils that exhibit excessive rutting or deflection during proofrolling should be repaired as directed by the field representative. Typical repairs include scarification/moisture conditioning and recompacting, over excavation followed by replacement with either properly compacted fill or by a subgrade stabilization fabric in conjunction with a sand fill or crushed stone as previously mentioned.

Existing Fill

As noted in **Geotechnical Characterization**, the borings locations encountered existing fill consisting of a mix of sand and clay to depths of approximately 5 feet to 13 feet. Generally, floor slabs and foundations could be supported on or above the remaining existing fill soils that have been densified in place and withstand proofrolling. However, there is inherent risk for the owner that compressible fill or unsuitable material, within or buried by the fill, will not be discovered. This risk of unforeseen conditions cannot be eliminated without completely removing the existing fill but can be reduced by following the recommendations contained in this report. Installing piles for deep foundation is another option to mitigate the risk associated with using existing fill.

Fill Material Types

Earthen materials used for structural fill should meet the following material property requirements.

Soil Type ¹	USCS Classification	Acceptable Location for Placement
Imported Soil	SC, SM, SP, SP-SM	All location and elevations.
On-Site Low to Moderate Plasticity Soils	SM, SP, SP-SM	All locations and elevations.

1. Structural fill should consist of approved materials free of organic matter and debris. Frozen material should not be used, and fill should not be placed on a frozen subgrade. A sample of each material type should be submitted to the Geotechnical Engineer for evaluation prior to use on this site.

Clay soils are not recommended for use as structural fill due to their high fines content, existing wet condition, and moisture sensitivity relative to the sandy soils that are available.

Fill Compaction Requirements

Structural fill should meet the following compaction requirements.

Item	Structural Fill	General Fill
Maximum Lift Thickness	9 inches or less in loose thickness when heavy, self-propelled compaction equipment is used 4 to 6 inches in loose thickness when hand-guided equipment (i.e. jumping jack or plate compactor) is used	Same as Structural fill
Minimum Compaction Requirements ^{1, 2, 3}	95% of maximum	92% of maximum
Water Content Range ^{1, 3}	-2% to +2% of optimum	As required to achieve min. compaction requirements

1. Fill should be tested for moisture content and compaction during placement. If in-place density tests indicate the specified moisture or compaction limits have not been met, the area represented by the tests should be reworked and retested as required until the specified moisture and compaction requirements are achieved.
2. It is not necessary to achieve 95% compaction on the existing ground prior to placing fill or beginning construction. However, the subgrade should be evaluated by a representative of the geotechnical engineer prior to placing fill or beginning construction.
3. Maximum density and optimum water content as determined by the standard Proctor test (ASTM D 698).

Utility Abandonment

Special precautions should be made to remove all underground utilities and their associated backfill as the proposed structure's foundations may overlay these materials. Terracon considers removing the utilities and underground structures and backfilling the resulting trenches to be the preferred method of abandonment. In-place abandonment by filling piping with grout should only be considered in the building footprint after checking the location of the piping in both plan and elevation space for potential conflict with the proposed foundations, construction, and new utilities. Care should be given to locating and addressing these items during the site preparation phase of the project. If overlooked, they could be detrimental to the long-term performance of the structure.

Grading and Drainage

All grades must provide effective drainage away from the building during and after construction and should be maintained throughout the life of the structure. Water retained next to the building can result in soil movements greater than those discussed in this report. Greater movements can result in unacceptable differential floor slab and/or foundation movements, cracked slabs and walls, and roof leaks. The roof should have gutters/drains with downspouts that discharge onto splash blocks at a distance of at least 5 feet from the building.

Exposed ground should be sloped and maintained at a minimum 5% away from the building for at least 5 feet beyond the perimeter of the building. Locally, flatter grades may be necessary to transition ADA access requirements for flatwork. After building construction and landscaping have been completed, final grades should be verified to document effective drainage has been achieved. Grades around the structure should also be periodically inspected and adjusted, as necessary, as part of the structure's maintenance program. Where paving or flatwork abuts the structure, a maintenance program should be established to effectively seal and maintain joints and prevent surface water infiltration.

Earthwork Construction Considerations

Shallow excavations for the proposed structure are anticipated to be accomplished with conventional construction equipment. Upon completion of filling and grading, care should be taken to maintain the subgrade water content prior to construction of floor slabs. Construction traffic over the completed subgrades should be avoided. The site should also be graded to prevent ponding of surface water on the prepared subgrades or in excavations. Water collecting over or adjacent to construction areas should be removed. If the subgrade freezes, desiccates, saturates, or is disturbed, the affected material should be removed, or the materials should be scarified, moisture conditioned, and recompact prior to floor slab construction.

Groundwater encountered in excavations should be pumped out from sumps or well points if applicable. Pumping water, as required, should continue until excavations are completely backfilled

As a minimum, excavations should be performed in accordance with OSHA 29 CFR, Part 1926, Subpart P, "Excavations" and its appendices, and in accordance with any applicable local, and/or state regulations.

Construction site safety is the sole responsibility of the contractor who controls the means, methods, and sequencing of construction operations. Under no circumstances shall the information provided herein be interpreted to mean Terracon is assuming responsibility for construction site safety, or the contractor's activities; such responsibility shall neither be implied nor inferred.

Construction Observation and Testing

The earthwork efforts should be monitored under the direction of the Geotechnical Engineer. Monitoring should include documentation of adequate removal of vegetation and topsoil, proofrolling, and mitigation of areas delineated by the proofroll to require mitigation.

Each lift of compacted fill should be tested, evaluated, and reworked, as necessary, until approved by the Geotechnical Engineer prior to placement of additional lifts. Each lift of fill should be tested for density and water content at a frequency of at least one test for every 2,500 square feet of

compacted fill in the building areas. One density and water content test should be performed for every 50 linear feet of compacted utility trench backfill.

In areas of foundation excavations, the bearing subgrade should be evaluated under the direction of the Geotechnical Engineer. If unanticipated conditions are encountered, the Geotechnical Engineer should prescribe mitigation options.

In addition to the documentation of the essential parameters necessary for construction, the continuation of the Geotechnical Engineer into the construction phase of the project provides the continuity to maintain the Geotechnical Engineer's evaluation of subsurface conditions, including assessing variations and associated design changes.

BULKHEAD DESIGN PARAMETERS

Based on the results of field and laboratory testing, we have developed the following design parameters at boring locations B-1 through B-4 for the CWALSHT design program:

B-1 CWALSHT Soil Design Parameters								
Depth (feet)	Estimated Saturated Unit Weight, γ (pcf)	Effective Unit Weight, γ' (pcf)	Effective Angle of Internal Friction, ϕ' (degrees)	Cohesion (ksf)	Adhesion factor	Skin Friction Angle, (degrees)	k-value (pci)	ϵ_{50}
0 to 3	118	55.6	30	-	-	11	50	-
3 to 5	123	60.6	-	0.25	0.225	-	20	0.025
5 to 18	113	50.6	29	-	-	11	35	-
18 to 23	110	47.6	28	-	-	11	20	-
23 to 28	123	60.6	33	-	-	11	80	-
28 to 38	110	47.6	28	-	-	11	20	-
38 to 43	125	62.6	34	-	-	11	90	-
43 to 68	115	52.6	30	-	-	11	35	-
68 to 75	126	63.6	-	1.5	1.35	-	500	0.01

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**B-2 CWALSHT Soil Design Parameters**

Depth (feet)	Estimated Saturated Unit Weight, γ (pcf)	Effective Unit Weight, γ' (pcf)	Effective Angle of Internal Friction, ϕ' (degrees)	Cohesion (ksf)	Adhesion factor	Skin Friction Angle, (degrees)	k-value (pci)	ϵ_{50}
0 to 13	113	50.6	29	-	-	11	35	-
13 to 18	110	47.6	27	-	-	11	15	-
18 to 28	123	60.6	33	-	-	11	80	-
28 to 43	130	67.6	35	-	-	11	100	-
43 to 68	113	50.6	29	-	-	11	35	-
68 to 75	124	61.4	-	0.75	0.675	-	100	0.015

B-3 CWALSHT Soil Design Parameters

Depth (feet)	Estimated Saturated Unit Weight, γ (pcf)	Effective Unit Weight, γ' (pcf)	Effective Angle of Internal Friction, ϕ' (degrees)	Cohesion (ksf)	Adhesion factor	Skin Friction Angle, (degrees)	k-value (pci)	ϵ_{50}
0 to 10	113	50.6	29	-	-	11	35	-
10 to 18	110	47.6	28	-	-	11	20	-
18 to 28	118	55.6	31	-	-	11	60	-
28 to 43	130	67.6	35	-	-	11	100	-
43 to 48	120	57.6	32	-	-	11	75	-
48 to 68	113	50.6	29	-	-	11	35	-
68 to 75	126	63.6	-	1.5	1.35	-	500	0.010

B-4 CWALSHT Soil Design Parameters								
Depth (feet)	Estimated Saturated Unit Weight, γ (pcf)	Effective Unit Weight, γ' (pcf)	Effective Angle of Internal Friction, ϕ' (degrees)	Cohesion (ksf)	Adhesion factor	Skin Friction Angle, (degrees)	k-value (pci)	ϵ_{50}
0 to 13	113	50.6	29	-	-	11	35	-
13 to 18	110	47.6	27	-	-	-		-
18 to 23	122	59.6	-	0.25	0.225	-	20	0.025
23 to 33	120	57.6	32	-	-	11	75	-
33 to 53	125	62.6	34	-	-	11	90	-
53 to 73	118	55.6	30	-	-	11	50	-
73 to 75	126	63.6	-	1.5	1.35	-	500	0.010

The skin Friction Angle, (degrees) reported was based on the assumption the sheet pile wall will consist of smooth steel sheet piling.

SHALLOW FOUNDATIONS

If the site has been prepared in accordance with the requirements noted in **Earthwork**, the following design parameters are applicable for shallow foundations for the cafeteria building addition.

Design Parameters – Compressive Loads

Item	Description
Maximum Net allowable bearing pressure ¹	1,000 psf for the civic building 2,000 psf for the amphitheater
The required embedment below lowest adjacent finished grade for frost protection and protective embedment ²	12 inches
Minimum width for continuous wall footings	12 inches for thickened slab 16 inches for strip footings
Minimum width for isolated column footings	24 inches
Approximate total settlement ³	Less than 1 inch
Estimated differential settlement ³	Up to 1/2 inch between columns and along 40 feet of wall

Ultimate coefficient of sliding friction ⁴	0.35
<ol style="list-style-type: none"> 1. The recommended net allowable bearing pressure is the pressure in excess of the minimum surrounding overburden pressure at the footing base elevation. The maximum net allowable bearing pressure may be increased by 1/3 for transient wind loads. 2. For frost protection and to reduce effects of seasonal moisture variations in subgrade soils. For perimeter footings and footings beneath unheated areas. 3. The actual magnitude of settlement that will occur beneath the foundations will depend upon the variations within the subsurface soil profile, the structural loading conditions and the quality of the foundation excavation. The estimated total and differential settlements listed assume that the foundation-related earthwork and the foundation design are completed in accordance with our recommendations. 4. For uplift resistance, use the weight of the foundation concrete plus the weight of the soil over the plan area of the footings. 110 pounds per cubic foot should be used for the density of the soil above the water table. 	

Foundation Construction Considerations

The foundation bearing materials should be evaluated at the time of the foundation excavation. This is an essential part of the construction process. The Geotechnical Engineer should use a combination of hand auger borings and dynamic cone penetrometer (DCP) testing to determine the suitability of the bearing materials for the design bearing pressure. DCP testing should be performed to a depth of 3 to 5 feet below the bottom of foundation excavation. Excessively soft, loose, or wet bearing soils should be over excavated to a depth recommended by the Geotechnical Engineer. The excavated soils should be replaced with structural fill or washed, crushed stone (NCDOT No. 57) wrapped in a geotextile fabric (Mirafi 140 N or equivalent). The need for the geotextile fabric with the crushed stone should be determined by the Geotechnical Engineer during construction based on sloughing/caving soils and excavation observations. However, footings could bear directly on the soils after over excavation if approved by the Geotechnical Engineer.

The base of all foundation excavations should be free of water and loose soil prior to placing concrete. Concrete should be placed soon after excavating to reduce bearing soil disturbance. Should the soils at bearing level become excessively disturbed or saturated, the affected soil should be removed prior to placing concrete.

SEISMIC CONSIDERATIONS

The seismic design requirements for buildings and other structures are based on Seismic Design Category. Site Classification is required to determine the Seismic Design Category for a structure. The Site Classification is based on the upper 100 feet of the site profile defined by a weighted average value of either shear wave velocity, standard penetration resistance, or undrained shear strength in accordance with Section 20.4 of ASCE 7 and the North Carolina State Building Code (NCBSC). Based on the soil properties encountered at the site and as described on the exploration logs and results, it is our professional opinion that the **Seismic Site Classification is**

D. Subsurface explorations at this site were extended to a maximum depth of 75 feet. The site properties below the boring depth to 100 feet were estimated based on our experience and knowledge of geologic conditions of the general area. Additional deeper borings or geophysical testing may be performed to confirm the conditions below the current boring depth.

LIQUEFACTION

Based on the results of the borings, liquefaction is not expected after the recommended earthwork, relatively low level of ground motions associated with the design earthquake.

FLOOR SLABS

Design parameters for floor slabs assume the requirements for **Earthwork** have been followed. Specific attention should be given to positive drainage away from the structure and positive drainage of the aggregate base beneath the floor slab.

Floor Slab Design Parameters

Item	Description
Floor Slab Support ¹	Approved existing soil or structural fill. ²
Estimated Modulus of Subgrade Reaction ²	100 pounds per square inch per inch (psi/in) for point loads
Base Course	4 inches crushed stone (NCDOT ABC)
¹ . Floor slabs should be structurally independent of building footings or walls to reduce the possibility of floor slab cracking caused by differential movements between the slab and foundation. ² . Modulus of subgrade reaction is an estimated value based upon our experience with the subgrade condition, the requirements noted in Earthwork , and the floor slab support as noted in this table. It is provided for point loads. For large area loads the modulus of subgrade reaction would be lower.	

The use of a vapor retarder should be considered beneath concrete slabs on grade covered with wood, tile, carpet, or other moisture sensitive or impervious coverings, or when the slab will support equipment sensitive to moisture. When conditions warrant the use of a vapor retarder, the slab designer should refer to ACI 302 and/or ACI 360 for procedures and cautions regarding the use and placement of a vapor retarder.

Saw-cut control joints should be placed in the slab to help control the location and extent of cracking. For additional recommendations refer to the ACI Design Manual. Joints or cracks should be sealed with a water-proof, non-extruding compressible compound specifically recommended for wet environments.

Where floor slabs are tied to perimeter walls or turn-down slabs to meet structural or other construction objectives, our experience indicates differential movement between the walls and slabs will likely be observed in adjacent slab expansion joints or floor slab cracks beyond the length of the structural dowels. The Structural Engineer should account for potential differential settlement through use of sufficient control joints, appropriate reinforcing or other means.

Settlement of floor slabs supported on existing fill materials cannot be accurately predicted, but could be larger than normal and result in some cracking. Mitigation measures, as noted in **Existing Fill** within **Earthwork**, are critical to the performance of floor slabs. In addition to the mitigation measures, the floor slab can be stiffened by adding steel reinforcement, grade beams and/or post-tensioned elements.

Floor Slab Construction Considerations

On most project sites, the site grading is generally accomplished early in the construction phase. However, as construction proceeds, the subgrade may be disturbed due to utility excavations, construction traffic, desiccation, rainfall, etc. As a result, the floor slab subgrade may not be suitable for placement of base stone and concrete and corrective action will be required to repair the damaged areas.

Finished subgrade, within and for at least 5 feet beyond the floor slab, should be protected from traffic, rutting, or other disturbance and maintained in a relatively moist condition until floor slabs are constructed. If the subgrade should become damaged or desiccated prior to construction of floor slabs, the affected material should be removed, and structural fill should be added to replace the resulting excavation. Final conditioning of the finished subgrade should be performed immediately prior to placement of the floor slab support course.

The Geotechnical Engineer should approve the condition of the floor slab subgrades immediately prior to placement of the floor slab support course, reinforcing steel, and concrete. We recommend the area be thoroughly proofrolled. Attention should be paid to high traffic areas that were rutted and disturbed earlier, and to areas where backfilled trenches are located.

GENERAL COMMENTS

Our analysis and opinions are based upon our understanding of the project, the geotechnical conditions in the area, and the data obtained from our site exploration. Natural variations will occur between exploration point locations or due to the modifying effects of construction or weather. The nature and extent of such variations may not become evident until during or after construction. Terracon should be retained as the Geotechnical Engineer, where noted in this report, to provide observation and testing services during pertinent construction phases. If variations appear, we can provide further evaluation and supplemental recommendations. If variations are noted in the

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absence of our observation and testing services on-site, we should be immediately notified so that we can provide evaluation and supplemental recommendations.

Our Scope of Services does not include either specifically or by implication any environmental or biological (e.g., mold, fungi, bacteria) assessment of the site or identification or prevention of pollutants, hazardous materials or conditions. If the owner is concerned about the potential for such contamination or pollution, other studies should be undertaken.

Our services and any correspondence or collaboration through this system are intended for the sole benefit and exclusive use of our client for specific application to the project discussed and are accomplished in accordance with generally accepted geotechnical engineering practices with no third-party beneficiaries intended. Any third-party access to services or correspondence is solely for information purposes to support the services provided by Terracon to our client. Reliance upon the services and any work product is limited to our client and is not intended for third parties. Any use or reliance of the provided information by third parties is done solely at their own risk. No warranties, either express or implied, are intended or made.

Site characteristics as provided are for design purposes and not to estimate excavation cost. Any use of our report in that regard is done at the sole risk of the excavating cost estimator as there may be variations on the site that are not apparent in the data that could significantly impact excavation cost. Any parties charged with estimating excavation costs should seek their own site characterization for specific purposes to obtain the specific level of detail necessary for costing. Site safety, and cost estimating including, excavation support, and dewatering requirements/design are the responsibility of others. If changes in the nature, design, or location of the project are planned, our conclusions and recommendations shall not be considered valid unless we review the changes and either verify or modify our conclusions in writing.

FIGURES

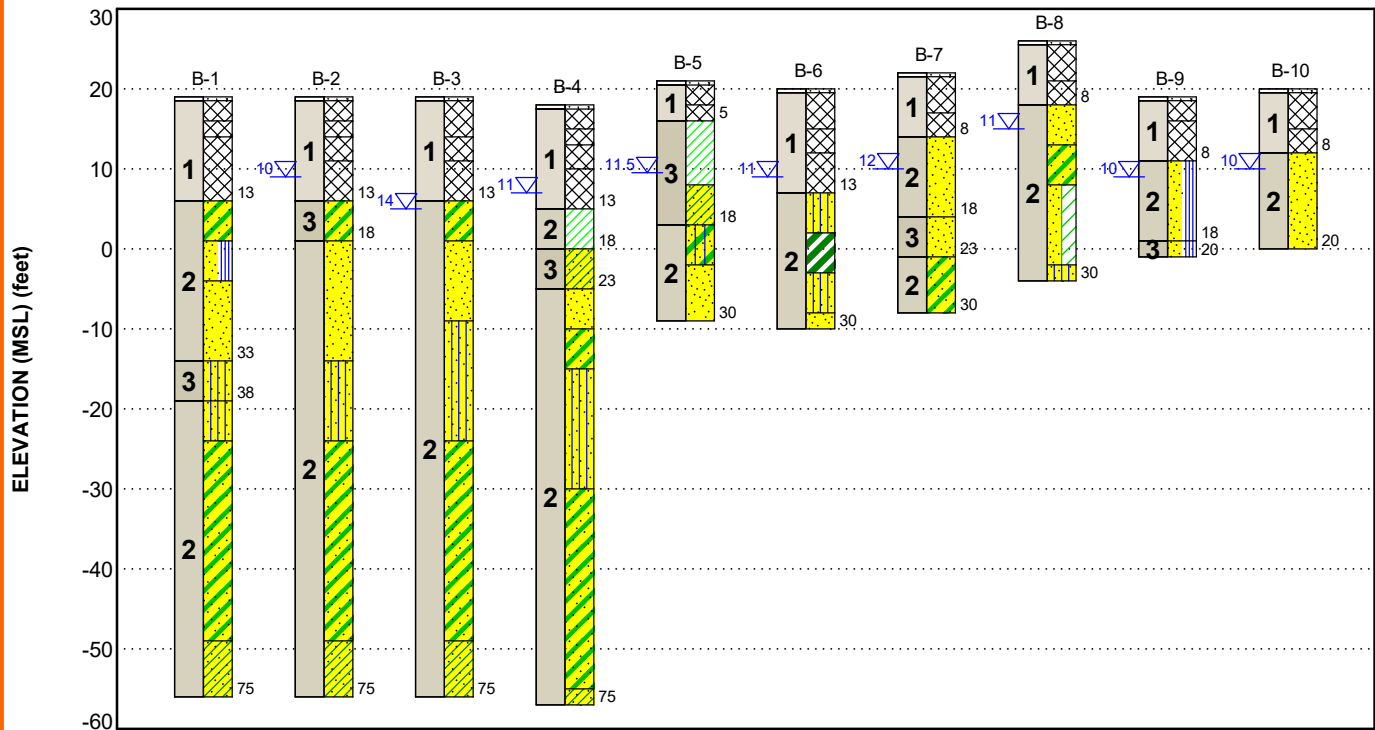
Contents:

GeoModel

Note: All attachments are one page unless otherwise noted.

GEOMODEL

Proposed Town Commons Civic Center ■ Greenville, NC
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This is not a cross section. This is intended to display the Geotechnical Model only. See individual logs for more detailed conditions.

Model Layer	Layer Name	General Description
1	Fill	Fill consisting of silty sand, poorly graded sand, clayey sand, lean clay, and sandy lean clay
2	Denser soil	loose to very dense sand and medium stiff to stiff clay
3	Looser soil	Very loose sand and very soft to soft clay

LEGEND

Topsoil	Poorly-graded Sand with Silt	Sandy Lean Clay	Fat Clay
Fill	Poorly-graded Sand	Lean Clay	Poorly-graded Sand with Clay
Clayey Sand	Silty Sand	Silty Clayey Sand	

First Water Observation

NOTES:

Layering shown on this figure has been developed by the geotechnical engineer for purposes of modeling the subsurface conditions as required for the subsequent geotechnical engineering for this project. Numbers adjacent to soil column indicate depth below ground surface.

Groundwater levels are temporal. The levels shown are representative of the date and time of our exploration. Significant changes are possible over time. Water levels shown are as measured during and/or after drilling. In some cases, boring advancement methods mask the presence/absence of groundwater. See individual logs for details.

ATTACHMENTS

EXPLORATION AND TESTING PROCEDURES

Field Exploration

Borings	Boring Depth (feet) ¹	Location
B-1 through B-4	75	Along bulkhead
B-5 and B-6	30	Near amphitheater
B-7 through B-10	20 to 30	Proposed building footprint

1. Referenced from existing ground surface.

Exploration Location Layout and Elevations: Coordinates of the exploration locations were determined by overlaying the plans provided on aerial photography by referencing common features. The exploration locations were located in the field by Terracon by referencing existing site features and a handheld GPS. Approximate elevations were obtained from publicly available mapping and GoogleEarth Pro. The location and elevations of the exploration locations should be considered accurate only to the degree implied by the means and methods used to define it.

Subsurface Exploration Procedures: We advanced the borings with a track-mounted rotary drill rig using mud rotary drilling techniques. Four samples were obtained in the upper 10 feet of each boring and at intervals of 5 feet thereafter. In the split-barrel sampling procedure, a standard 2-inch outer diameter split-barrel sampling spoon was driven into the ground by a 140-pound automatic hammer falling a distance of 30 inches. The number of blows required to advance the sampling spoon the last 12 inches of a normal 18-inch penetration is recorded as the Standard Penetration Test (SPT) resistance value. The SPT resistance values, also referred to as N-values, are indicated on the boring logs at the test depths. We observed and recorded groundwater levels during drilling and sampling. For safety purposes, all borings were backfilled with auger cuttings after their completion.

The sampling depths, penetration distances, and other sampling information was recorded on the field boring logs. The samples were placed in appropriate containers and taken to our soil laboratory for testing and classification by a Geotechnical Engineer. Our exploration team prepared field boring logs as part of the drilling operations. These field logs included visual classifications of the materials encountered during drilling and our interpretation of the subsurface conditions between samples. Final boring logs were prepared from the field logs. The final boring logs represent the Geotechnical Engineer's interpretation of the field logs and include modifications based on observations and tests of the samples in our laboratory.

Laboratory Testing

The project engineer reviewed the field data and assigned laboratory tests to understand the engineering properties of the various soil strata, as necessary, for this project. Procedural

Geotechnical Engineering Report

Town Common Civic Center and Bulkhead ■ Greenville, Pitt County, North Carolina
February 11, 2022 ■ Terracon Project No. 72215104



standards noted below are for reference to methodology in general. In some cases, variations to methods were applied because of local practice or professional judgment. Standards noted below include reference to other, related standards. Such references are not necessarily applicable to describe the specific test performed.

- ASTM D2216 Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass
- ASTM D2487 Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System)
- ASTM D2488 Standard Practice of Description and Identification of Soils (Visual Manual Method)
- ASTM D4318 Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
- ASTM D422 Standard Test Method for Particle-Size Analysis of Soils
- ASTM D1140 Standard Test Methods for Determining the Amount of Material Finer than No. 200 Sieve in Soils by Washing

Detailed results of our laboratory testing can be found in in the **Exploration Results** section and are attached herein. Our laboratory testing program includes examination of soil samples by an engineer. Based on the material's texture and plasticity, we describe and classify soil samples in accordance with the Unified Soil Classification System (USCS).

PHOTOGRAPHY LOG

Photos Taken October 11 and 15, 2021



View of the bulkhead facing west



View of building footprint area facing south east

Geotechnical Engineering Report

Town Common Civic Center and Bulkhead ■ Greenville, Pitt County, North Carolina
February 11, 2022 ■ Terracon Project No. 72215104



View of amphitheater facing west



Overview of the site facing north west

SITE LOCATION AND EXPLORATION PLANS

Contents:

Site Location Plan

Exploration Plan

Note: All attachments are one page unless noted above.

SITE LOCATION

Proposed Town Commons Civic Center ■ Greenville, NC
February 11, 2022 ■ Terracon Project No. 72215104

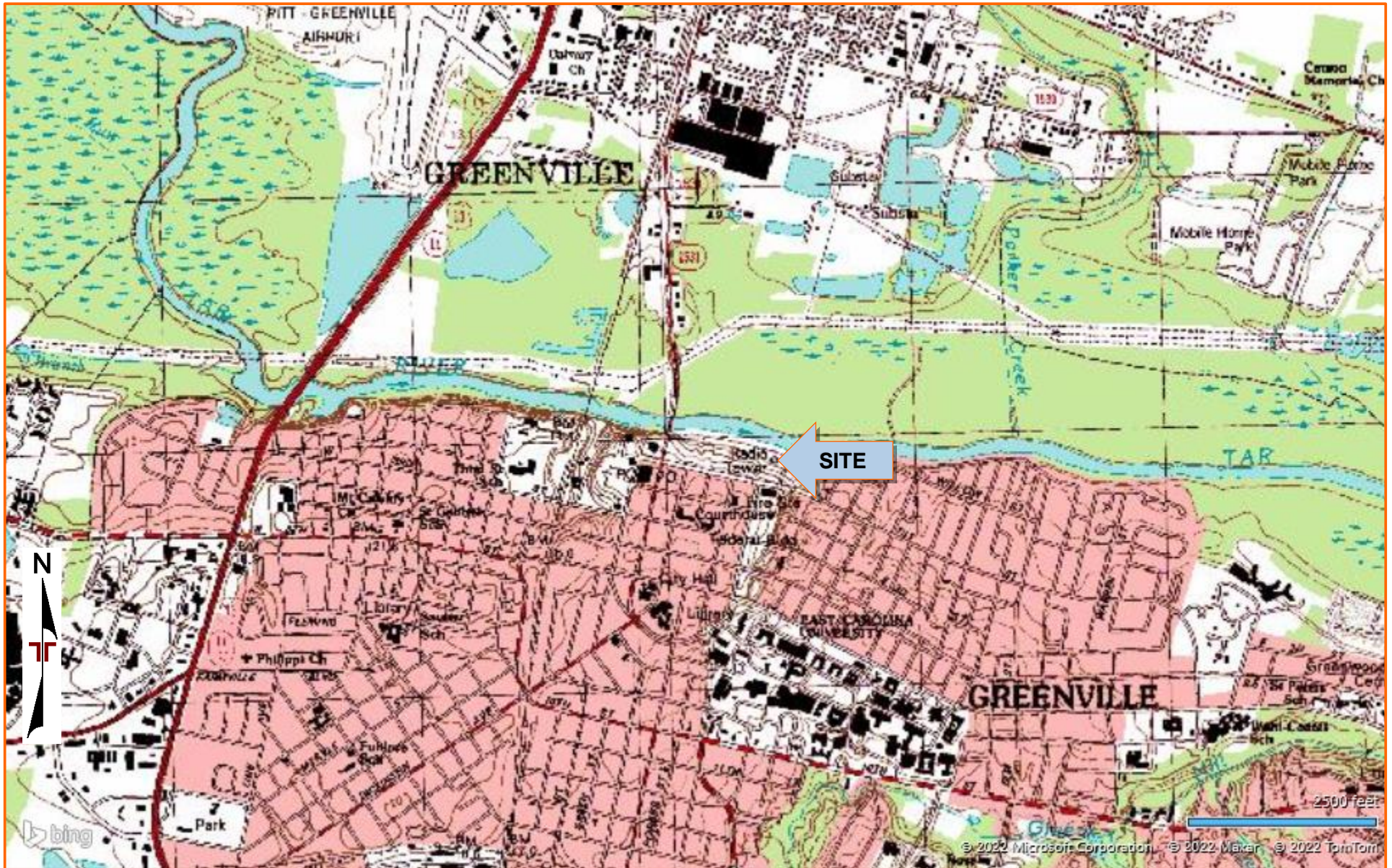


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT
INTENDED FOR CONSTRUCTION PURPOSES

TOPOGRAPHIC MAP IMAGE COURTESY OF THE U.S. GEOLOGICAL SURVEY
QUADRANGLES INCLUDE: GREENVILLE NW, NC (1/1/1998), GREENVILLE NE, NC
(1/1/1998), GREENVILLE SW, NC (1/1/1998) and GREENVILLE SE, NC (1/1/1998).

EXPLORATION PLAN

Proposed Town Commons Civic Center ■ Greenville, NC
February 11, 2022 ■ Terracon Project No. 72215104



DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT
INTENDED FOR CONSTRUCTION PURPOSES

AERIAL PHOTOGRAPHY PROVIDED BY
MICROSOFT BING MAPS

EXPLORATION RESULTS

Contents:

Exploration Logs (B-1 through B-10)

Grain Size Distribution

Atterberg Limits Results

Note: All attachments are one page unless noted above.

BORING LOG NO. B-1

Page 1 of 2

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6166° Longitude: -77.3724° Approximate Surface Elev.: 19 (Ft.) +/-	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		DEPTH ELEVATION (Ft.)							
		0.5 TOPSOIL , 6 inches 18.5+/-							
		3.0 FILL - SILTY SAND, CLAYEY SAND , brown 16+/-				4-7-7 N=14			
		5.0 FILL - LEAN CLAY , light brown with orange mottle 14+/-	5			0-1-2 N=3			
		FILL - SILTY SAND, CLAYEY SAND, LEAN CLAY , peices of red brick, gravel, and glass, black, brown, and light gray				4-5-2 N=7			
1		13.0 6+/-	10			2-4-3 N=7			
		CLAYEY SAND (SC) , orangish brown, loose				2-6-3 N=9			
		18.0 1+/-	15						
		POORLY GRADED SAND WITH SILT (SP-SM) , brown, loose				2-1-3 N=4			
2		23.0 -4+/-	20						
		POORLY GRADED SAND (SP) , brown with orange to grayish brown, loose to medium dense				4-10-11 N=21			
		33.0 -14+/-	25						
		SILTY SAND (SM) , gray, very loose				2-3-2 N=5			
3		38.0 -19+/-	30						
		SILTY SAND (SM) , gray, very dense				5-1-1 N=2			
2		43.0 -24+/-	35						
			40			50/3"			

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-09-2021

Boring Completed: 12-09-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON DATATEMPLATE.GDT 2/11/22


BORING LOG NO. B-1

Page 2 of 2

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6166° Longitude: -77.3724° Approximate Surface Elev.: 19 (Ft.) +/- DEPTH ELEVATION (Ft.)	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
2		CLAYEY SAND WITH SHELL FRAGMENTS (SC) , micaceous, dark gray, loose to medium dense	45		X	2-3-5 N=8			
			50		X	3-2-6 N=8	30.2	31-19-12	37
			55		X	3-3-3 N=6			
			60		X	3-4-6 N=10			
			65		X	2-2-4 N=6			
			70		X	3-4-6 N=10			
			75		X	2-3-6 N=9			
		Boring Terminated at 75 Feet							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-09-2021

Boring Completed: 12-09-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON_DATATEMPLATE.GDT 2/11/22

BORING LOG NO. B-2

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PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6165° Longitude: -77.3713° Approximate Surface Elev.: 19 (Ft.) +/-	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		DEPTH ELEVATION (Ft.)							
		0.5 TOPSOIL , 6 inches 18.5+/-							
		FILL - CLAYEY SAND, LEAN CLAY , brown with trace orange				2-3-4 N=7			
		3.0							
		FILL - POORLY GRADED SAND, LEAN CLAY, CLAYEY SAND , brown				3-2-3 N=5			
		5.0 14+/-							
		FILL - LEAN CLAY , brown with black gravel				2-3-6 N=9			
		8.0 11+/-							
		FILL - CLAYEY SAND, LEAN CLAY , brownish gray				5-5-3 N=8			
		13.0 6+/-							
		CLAYEY SAND (SC) , brownish gray, very loose				0-1-1 N=2			
		18.0 1+/-							
		POORLY GRADED SAND (SP) , orangish brown with red to grayish brown, medium dense to very dense				6-13-11 N=24			
						5-8-9 N=17			
						8-18-42 N=60			
		33.0 -14+/-							
		SILTY SAND (SM) , gray, very dense				50/4"			
						50/4"			
		43.0 -24+/-							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

End of day on 12/9/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-08-2021

Boring Completed: 12-09-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON DATATEMPLATE.GDT 2/11/22


BORING LOG NO. B-2

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PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6165° Longitude: -77.3713° Approximate Surface Elev.: 19 (Ft.) +/- ELEVATION (Ft.)	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS	PERCENT FINES
								LL-PL-PI	
2		CLAYEY SAND WITH SHELL FRAGMENTS (SC) , dark gray, loose	45		X	3-4-5 N=9			
			50		X	2-2-3 N=5			
			55		X	2-3-5 N=8			
			60		X	2-3-5 N=8			
			65		X	2-4-4 N=8			
			70		X	2-3-3 N=6			
			75		X	3-3-4 N=7			
		Boring Terminated at 75 Feet							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).


Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

 End of day on 12/9/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-08-2021

Boring Completed: 12-09-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins



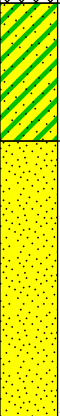
Project No.: 72215104

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Page 1 of 2

**CLIENT: The East Group, P.A.
Greenville, NC**

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan		DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS	PERCENT FINES					
		Latitude: 35.6163° Longitude: -77.3700°	Approximate Surface Elev.: 19 (Ft.) +/-						LL-PL-PI						
		DEPTH	ELEVATION (Ft.)												
1		0.5	18.5+/-	5		X	2-3-5 N=8	18.0							
		FILL - CLAYEY SAND , trace organics, brown to orangish brown													
		5.0	14+/-				X	4-5-4 N=9			19.1				
		FILL - SILTY SAND, LEAN CLAY , brown with orangish red													
		8.0	11+/-	10		X	2-3-4 N=7	18.7							
		FILL - CLAYEY SAND, LEAN CLAY , trace organics, red brick peices, dark brownish orange													
		13.0	6+/-				15	▽			X	0-2-3 N=5	22.6	24-13-11	39
		CLAYEY SAND (SC) , gray with orange, loose													
2		18.0	1+/-	20		X	4-7-9 N=16	20.9							
		POORLY GRADED SAND (SP) , clay lense, light brown, medium dense													
		28.0	-9+/-				25				X	4-5-7 N=12	24.7		
		SILTY SAND (SM) , dark brown to dark gray, dense to very dense													
						30		X	24-29-45 N=74	27.5					
				35					X	50-50-50 N=100			28.8		
						40		X		5-18-16 N=34					
		43.0	-24+/-												

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See **Exploration and Testing Procedures** for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See **Supporting Information** for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

End of day on 12/8/21

Boring Started: 12-07-2021

Boring Completed: 12-07-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

314 Beacon Dr
Winterville, NC

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BORING LOG NO. B-3

Page 2 of 2

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6163° Longitude: -77.3700° Approximate Surface Elev.: 19 (Ft.) +/- DEPTH ELEVATION (Ft.)	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS	PERCENT FINES
								LL-PL-PI	
2		CLAYEY SAND WITH SHELL FRAGMENTS (SC) , dark gray, loose to medium dense	45		X	13-7-8 N=15	32.8		
			50		X	3-3-4 N=7			
			55		X	2-2-4 N=6	32.7		
			60		X	3-3-3 N=6			
			65		X	3-3-3 N=6	31.9		
			70		X	3-4-6 N=10			
		SANDY LEAN CLAY (CL) , micaceous, trace shell fragments, dark gray, stiff	75		X	4-4-5 N=9	27.9		
		Boring Terminated at 75 Feet							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).


Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

 End of day on 12/8/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-07-2021

Boring Completed: 12-07-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

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BORING LOG NO. B-4

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PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6160° Longitude: -77.3689° Approximate Surface Elev.: 18 (Ft.) +/-	DEPTH (Ft.)	ELEVATION (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		0.5 TOPSOIL , 6 inches		17.5+/-						
		FILL - CLAYEY SAND , trace organics, brown with orange				X	5-6-6 N=12			
		3.0 FILL - CLAYEY SAND, LEAN CLAY , orangish brown		15+/-						
		5.0 FILL - LEAN CLAY, CLAYEY SAND , gray to brown with orange		13+/-		X	4-5-4 N=9			
		8.0 FILL - POORLY GRADED SAND, LEAN CLAY , grayish brown with orange		10+/-		X	3-4-2 N=6			
		13.0 LEAN CLAY (CL) , gray, soft to medium stiff		5+/-		X	3-4-6 N=10			
		18.0 SANDY LEAN CLAY (CL) , light gray to dark brown, very soft		0+/-		X	0-1-3 N=4			
		23.0 POORLY GRADED SAND (SP) , noted clay lense, gray, medium dense		-5+/-		X	2-1-0 N=1			
		28.0 CLAYEY SAND (SC) , micaceous, dark gray, medium dense		-10+/-		X	4-8-7 N=15			
		33.0 SILTY SAND (SM) , noted clay lense, gray, very dense		-15+/-		X	2-3-10 N=13			
							50/4"			
							40-44-45 N=89			

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

End of day on 12/8/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-06-2021

Boring Completed: 12-07-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON DATATEMPLATE.GDT 2/11/22

BORING LOG NO. B-4

Page 2 of 2

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6160° Longitude: -77.3689° Approximate Surface Elev.: 18 (Ft.) +/- DEPTH ELEVATION (Ft.)	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
2		SILTY SAND (SM) , noted clay lense, gray, very dense (<i>continued</i>)	45			50/1"			
		48.0 -30+/-							
		CLAYEY SAND WITH SHELL FRAGMENTS (SC) , micaceous, dark gray, dense to loose	50	X		39-30-5 N=35			
			55	X		3-4-5 N=9			
			60	X		2-3-5 N=8			
			65	X		2-3-4 N=7			
		73.0 -55+/-	70	X		2-3-4 N=7			
		SANDY LEAN CLAY (CL) , micaceous, with shell fragments, dark gray, stiff	75	X		3-4-6 N=10			
		Boring Terminated at 75 Feet							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

End of day on 12/8/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-06-2021

Boring Completed: 12-07-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON_DATATEMPLATE.GDT 2/11/22

BORING LOG NO. B-5

Page 1 of 1

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6162° Longitude: -77.3702° Approximate Surface Elev.: 21 (Ft.) +/-	DEPTH (Ft.)	ELEVATION (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		DEPTH								
		0.5 TOPSOIL , 6 inches		20.5+/-						
1		FILL - CLAYEY SAND, LEAN CLAY , trace gravel, brown with orange	3.0	18+/-		X	3-4-3 N=7			
		FILL - SANDY LEAN CLAY , trace gravel, brownish gray with orange	5.0	16+/-		X	2-4-6 N=10			
		LEAN CLAY (CL) , grayish brown, soft to medium stiff				X	2-2-3 N=5			
3						X	2-1-3 N=4			
		SANDY LEAN CLAY (CL) , brownish gray, very soft	13.0	8+/-		X	WOH			
		SILTY CLAYEY SAND (SC-SM) , brownish gray, loose	18.0	3+/-		X	1-1-3 N=4			
2		POORLY GRADED SAND (SP) , noted clay lense, orangish brown, medium dense	23.0	-2+/-		X	4-7-8 N=15			
			30.0	-9+/-		X	3-11-17 N=28			
		Boring Terminated at 30 Feet								

Stratification lines are approximate. In-situ, the transition may be gradual.
WOH= Weight of Hammer

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

End of day on 12/9/21

Terracon
314 Beacon Dr
Winterville, NC

Boring Started: 12-08-2021

Boring Completed: 12-08-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON_DATATEMPLATE.GDT 2/11/22

BORING LOG NO. B-6

Page 1 of 1

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6161° Longitude: -77.3699° Approximate Surface Elev.: 20 (Ft.) +/- ELEVATION (Ft.)	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		0.5 TOPSOIL , 6 inches	19.5+/-						
		FILL - CLAYEY SAND, LEAN CLAY , brown				5-8-5 N=13			
1		5.0 FILL - SANDY LEAN CLAY , brown with orange mottle	15+/-			3-3-4 N=7			
		8.0 FILL - CLAYEY SAND, LEAN CLAY , trace metal and glass, black and gray	12+/-			1-1-3 N=4			
		13.0 SILTY SAND (SM) , dark grayish brown, loose	7+/-			4-3-5 N=8			
		18.0 FAT CLAY (CH) , noted poorly graded sand lense, light gray, medium stiff to stiff	2+/-			2-2-2 N=4			
2		23.0 SILTY SAND (SM) , clay lense, orangish brown, loose	-3+/-			0-3-5 N=8			
		28.0 POORLY GRADED SAND (SP) , orangish brown, medium dense	-8+/-			1-3-4 N=7			
		30.0 Boring Terminated at 30 Feet	-10+/-			2-4-6 N=10			

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

End of day on 12/8/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-07-2021

Boring Completed: 12-07-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON DATATEMPLATE.GDT 2/11/22


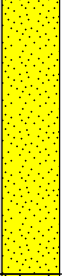
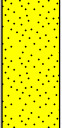

BORING LOG NO. B-7

Page 1 of 1

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6157° Longitude: -77.3693° Approximate Surface Elev.: 22 (Ft.) +/- ELEVATION (Ft.)	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		DEPTH							
		0.5 TOPSOIL , 6 inches	21.5+/-						
1		FILL - CLAYEY SAND , brownish gray with orange mottle			X	2-3-5 N=8			
		5.0	17+/-		X	2-2-4 N=6			
		FILL - POORLY GRADED SAND, CLAYEY SAND, LEAN CLAY , orange			X	4-7-8 N=15			
		8.0	14+/-		X	5-4-4 N=8			
2		POORLY GRADED SAND (SP) , noted clay lense, dark brownish orange, loose to medium dense			X	1-3-4 N=7			
		18.0	4+/-		X	2-1-2 N=3			
3		POORLY GRADED SAND (SP) , black to orangish brown, very loose			X	2-4-8 N=12			
		23.0	-1+/-		X	5-10-8 N=18			
2		CLAYEY SAND (SC) , dark brown with trace orange and black, medium dense			X				
		30.0	-8+/-		X				
		Boring Terminated at 30 Feet							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).


Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

 End of day on 12/8/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-07-2021

Boring Completed: 12-07-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON_DATATEMPLATE.GDT 2/11/22

BORING LOG NO. B-8

Page 1 of 1

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6155° Longitude: -77.3690° Approximate Surface Elev.: 26 (Ft.) +/-	DEPTH (Ft.)	ELEVATION (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		DEPTH								
		0.5 TOPSOIL , 6 inches		25.5+/-						
1		FILL - SANDY LEAN CLAY , trace organics, brown with orange and red specks				X	2-2-3 N=5	24.6		
		5.0	5	21+/-		X	2-2-2 N=4	20.4		
		FILL - CLAYEY SAND, SILTY SAND, SANDY LEAN CLAY , trace shell, brown with orange and black				X	3-3-2 N=5	20.0		
		8.0	10	18+/-		X	1-2-3 N=5	21.0		
		POORLY GRADED SAND (SP) , noted clay lense, dark brown, loose								
		13.0	15	13+/-		X	3-4-4 N=8	25.0		
		CLAYEY SAND (SC) , orangish brown, loose								
2		18.0	20	8+/-		X	3-4-6 N=10	27.7		
		POORLY GRADED SAND WITH CLAY (SP-SC) , orangish brown, loose to medium dense								
		28.0	25	-2+/-		X	2-3-4 N=7	27.7	28-17-11	9
		SILTY SAND (SM) , orangish brown, medium dense								
		30.0	30	-4+/-		X	2-2-9 N=11	35.3		
		Boring Terminated at 30 Feet								

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

End of day on 12/7/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-06-2021

Boring Completed: 12-06-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COM.GPJ TERRACON_DATATEMPLATE.GDT 2/11/22

BORING LOG NO. B-9

Page 1 of 1

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6158° Longitude: -77.3691° Approximate Surface Elev.: 19 (Ft.) +/-	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		DEPTH ELEVATION (Ft.)							
		0.5 TOPSOIL , 6 inches 18.5+/-							
1		3.0 FILL - SANDY LEAN CLAY , brown 16+/-				5-6-5 N=11			
		FILL - SILTY SAND, CLAYEY SAND, LEAN CLAY , trace gravel, brown with orange and black	5			1-2-1 N=3			
		8.0 11+/-				0-0-2 N=2			
2		POORLY GRADED SAND WITH SILT (SP-SM) , noted clay lense, orangish brown, very loose to loose	10	▽		2-2-2 N=4	25.9	NP	9
		18.0 1+/-	15			2-2-3 N=5			
3		POORLY GRADED SAND WITH SILT (SP-SM) , orangish brown, very loose	20			0-0-3 N=3			
		20.0 -1+/-							
		Boring Terminated at 20 Feet							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).

Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

▽ End of day on 12/8/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-07-2021

Boring Completed: 12-07-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

Project No.: 72215104

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL 72215104 PROPOSED TOWN COMMONS CIVIC CENTER TERRACON_DATATEMPLATE.GDT 2/11/22



BORING LOG NO. B-10

Page 1 of 1

PROJECT: Proposed Town Commons Civic Center

CLIENT: The East Group, P.A.
Greenville, NC

SITE: First Street
Greenville, NC

MODEL LAYER	GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 35.6156° Longitude: -77.3689° Approximate Surface Elev.: 20 (Ft.) +/- ELEVATION (Ft.)	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS LL-PL-PI	PERCENT FINES
		DEPTH							
		0.5 TOPSOIL , 6 inches	19.5+/-						
1		FILL - CLAYEY SAND , brown with orange mottle				4-4-4 N=8			
		5.0	15+/-			2-3-4 N=7			
		FILL - POORLY GRADED SAND , dark red				5-3-4 N=7			
		8.0	12+/-			1-2-3 N=5			
2		POORLY GRADED SAND (SP) , orangish brown to brown, loose				1-2-2 N=4			
		20.0	0+/-			1-2-4 N=6			
		Boring Terminated at 20 Feet							

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:
Mud Rotary

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (if any).


Notes:

Abandonment Method:
Boring backfilled with bentonite chips after delayed water levels were measured.

See [Supporting Information](#) for explanation of symbols and abbreviations.

Elevations were interpolated from a topographic site plan.

WATER LEVEL OBSERVATIONS

 End of day on 12/7/21

Terracon

314 Beacon Dr
Winterville, NC

Boring Started: 12-06-2021

Boring Completed: 12-06-2021

Drill Rig: Rig:448/Geoprobe

Driller: Willie Duggins

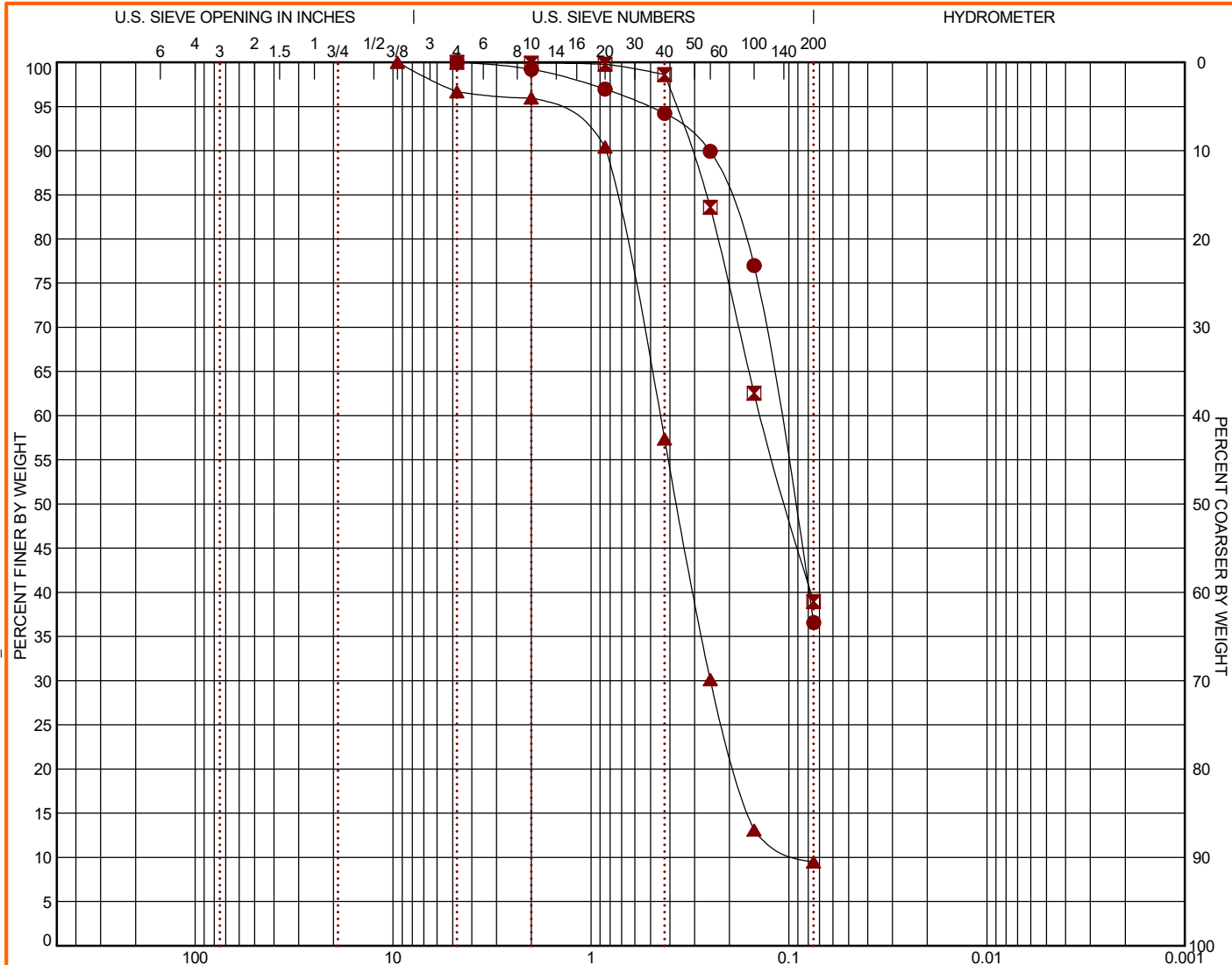
Project No.: 72215104

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GRAIN SIZE DISTRIBUTION

ASTM D422 / ASTM C136

LABORATORY TESTS ARE NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GRAIN SIZE: USCS 1 72215104 PROPOSED TOWN COM.GPJ TERRACON_DATATEMPLATE.GDT 2/10/22



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

BORING ID	DEPTH	% COBBLES	% GRAVEL	% SAND	% SILT	% FINES	% CLAY	USCS
B-1	48.5 - 50	0.0	0.0	63.4		36.6		SC
B-3	13.5 - 15	0.0	0.0	61.0		39.0		SC
B-8	23.5 - 25	0.0	3.3	87.2		9.5		SP-SC

GRAIN SIZE				SOIL DESCRIPTION					
	●	☒	▲	Sieve	% Finer	Sieve	% Finer	Sieve	% Finer
D ₆₀	0.112	0.139	0.449	#4	100.0	#4	100.0	3/8"	100.0
D ₃₀			0.249	#10	99.2	#10	99.91	#4	96.67
D ₁₀			0.083	#20	96.97	#20	99.77	#10	95.96
				#40	94.22	#40	98.6	#20	90.4
				#60	89.93	#60	83.59	#40	57.37
				#100	76.99	#100	62.53	#60	30.13
				#200	36.58	#200	38.95	#100	13.1
								#200	9.49
COEFFICIENTS				REMARKS					
	●	☒	▲	● CLAYEY SAND with SHELL FRAGMENTS (SC)					
C _c			1.67	☒ CLAYEY SAND (SC)					
C _u			5.43	▲ POORLY GRADED SAND with CLAY (SP-SC)					
				●					
				☒					
				▲					

PROJECT: Proposed Town Commons Civic Center

SITE: First Street
Greenville, NC

Terracon
314 Beacon Dr
Winterville, NC

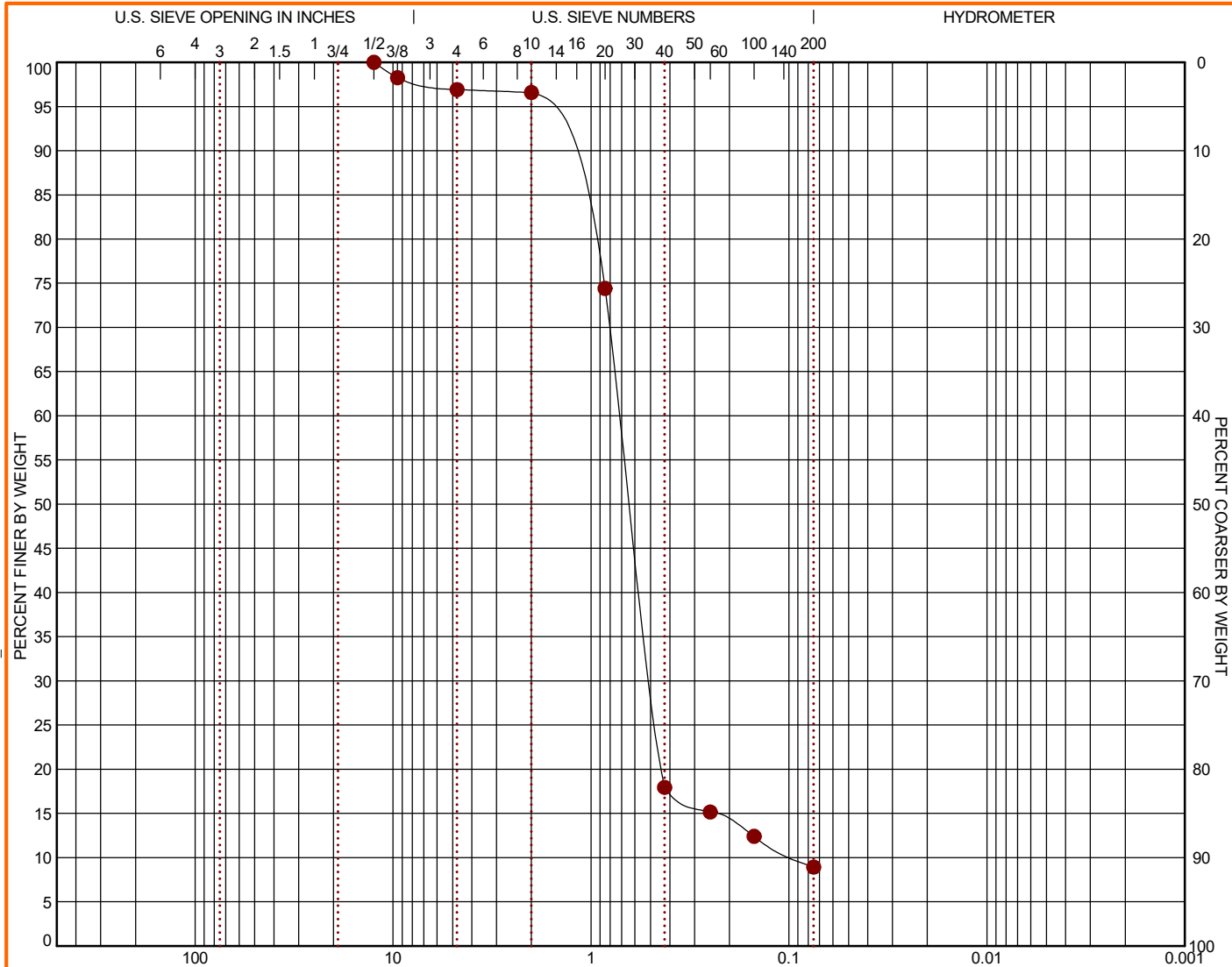
PROJECT NUMBER: 72215104

CLIENT: The East Group, P.A.
Greenville, NC

GRAIN SIZE DISTRIBUTION

ASTM D422 / ASTM C136

LABORATORY TESTS ARE NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GRAIN SIZE: USCS 1 72215104 PROPOSED TOWN COM.GPJ TERRACON_DATATEMPLATE.GDT 2/10/22



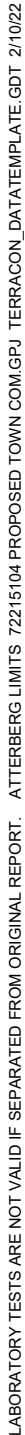
COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

BORING ID	DEPTH	% COBBLES	% GRAVEL	% SAND	% SILT	% FINES	% CLAY	USCS
B-9	8.5 - 10	0.0	3.1	88.0		8.9		SP-SM

GRAIN SIZE				SOIL DESCRIPTION					
D ₆₀	0.712			Sieve	% Finer	Sieve	% Finer	Sieve	% Finer
D ₃₀	0.493			1/2"	100.0				
D ₁₀	0.093			3/8"	98.26				
				#4	96.91				
				#10	96.58				
				#20	74.41				
				#40	17.95				
				#60	15.16				
				#100	12.41				
				#200	8.93				
COEFFICIENTS									
C _c	3.67								
C _u	7.67								
				REMARKS					
				POORLY GRADED SAND with SILT (SP-SM)					

PROJECT: Proposed Town Commons Civic Center	<p>314 Beacon Dr Winterville, NC</p>	PROJECT NUMBER: 72215104
SITE: First Street Greenville, NC		CLIENT: The East Group, P.A. Greenville, NC

ASTM D4318



SUPPORTING INFORMATION

Contents:






General Notes

Unified Soil Classification System

Note: All attachments are one page unless noted above.

GENERAL NOTES

DESCRIPTION OF SYMBOLS AND ABBREVIATIONS
East Carteret High School Additions ■ Beaufort, NC
Terracon Project No. 72215115

SAMPLING	WATER LEVEL	FIELD TESTS
 Standard Penetration Test	 Water Initially Encountered	N Standard Penetration Test Resistance (Blows/Ft.)
	 Water Level After a Specified Period of Time	(HP) Hand Penetrometer
	 Water Level After a Specified Period of Time	(T) Torvane
	 Cave In Encountered	(DCP) Dynamic Cone Penetrometer
	<p>Water levels indicated on the soil boring logs are the levels measured in the borehole at the times indicated. Groundwater level variations will occur over time. In low permeability soils, accurate determination of groundwater levels is not possible with short term water level observations.</p>	UC Unconfined Compressive Strength
		(PID) Photo-Ionization Detector
		(OVA) Organic Vapor Analyzer

DESCRIPTIVE SOIL CLASSIFICATION

Soil classification as noted on the soil boring logs is based Unified Soil Classification System. Where sufficient laboratory data exist to classify the soils consistent with ASTM D2487 "Classification of Soils for Engineering Purposes" this procedure is used. ASTM D2488 "Description and Identification of Soils (Visual-Manual Procedure)" is also used to classify the soils, particularly where insufficient laboratory data exist to classify the soils in accordance with ASTM D2487. In addition to USCS classification, coarse grained soils are classified on the basis of their in-place relative density, and fine-grained soils are classified on the basis of their consistency. See "Strength Terms" table below for details. The ASTM standards noted above are for reference to methodology in general. In some cases, variations to methods are applied as a result of local practice or professional judgment.

LOCATION AND ELEVATION NOTES

Exploration point locations as shown on the Exploration Plan and as noted on the soil boring logs in the form of Latitude and Longitude are approximate. See [Exploration and Testing Procedures](#) in the report for the methods used to locate the exploration points for this project. Surface elevation data annotated with +/- indicates that no actual topographical survey was conducted to confirm the surface elevation. Instead, the surface elevation was approximately determined from topographic maps of the area.

STRENGTH TERMS

RELATIVE DENSITY OF COARSE-GRAINED SOILS (More than 50% retained on No. 200 sieve.) Density determined by Standard Penetration Resistance		CONSISTENCY OF FINE-GRAINED SOILS (50% or more passing the No. 200 sieve.) Consistency determined by laboratory shear strength testing, field visual-manual procedures or standard penetration resistance		
Descriptive Term (Density)	Standard Penetration or N-Value Blows/Ft.	Descriptive Term (Consistency)	Unconfined Compressive Strength Qu, (tsf)	Standard Penetration or N-Value Blows/Ft.
Very Loose	0 - 3	Very Soft	less than 0.25	0 - 1
Loose	4 - 9	Soft	0.25 to 0.50	2 - 4
Medium Dense	10 - 29	Medium Stiff	0.50 to 1.00	4 - 8
Dense	30 - 50	Stiff	1.00 to 2.00	8 - 15
Very Dense	> 50	Very Stiff	2.00 to 4.00	15 - 30
		Hard	> 4.00	> 30

RELEVANCE OF SOIL BORING LOG

The soil boring logs contained within this document are intended for application to the project as described in this document. Use of these soil boring logs for any other purpose may not be appropriate.

Criteria for Assigning Group Symbols and Group Names Using Laboratory Tests ^A					Soil Classification	
					Group Symbol	Group Name ^B
Coarse-Grained Soils: More than 50% retained on No. 200 sieve	Gravels: More than 50% of coarse fraction retained on No. 4 sieve	Clean Gravels: Less than 5% fines ^C	$Cu \geq 4$ and $1 \leq Cc \leq 3$ ^E	GW	Well-graded gravel ^F	
			$Cu < 4$ and/or $[Cc < 1 \text{ or } Cc > 3.0]$ ^E	GP	Poorly graded gravel ^F	
		Gravels with Fines: More than 12% fines ^C	Fines classify as ML or MH	GM	Silty gravel ^{F, G, H}	
			Fines classify as CL or CH	GC	Clayey gravel ^{F, G, H}	
	Sands: 50% or more of coarse fraction passes No. 4 sieve	Clean Sands: Less than 5% fines ^D	$Cu \geq 6$ and $1 \leq Cc \leq 3$ ^E	SW	Well-graded sand ^I	
			$Cu < 6$ and/or $[Cc < 1 \text{ or } Cc > 3.0]$ ^E	SP	Poorly graded sand ^I	
		Sands with Fines: More than 12% fines ^D	Fines classify as ML or MH	SM	Silty sand ^{G, H, I}	
			Fines classify as CL or CH	SC	Clayey sand ^{G, H, I}	
Fine-Grained Soils: 50% or more passes the No. 200 sieve	Silts and Clays: Liquid limit less than 50	Inorganic:	$PI > 7$ and plots on or above “A”	CL	Lean clay ^{K, L, M}	
			$PI < 4$ or plots below “A” line ^J	ML	Silt ^{K, L, M}	
		Organic:	Liquid limit - oven dried	< 0.75	OL	Organic clay ^{K, L, M, N}
			Liquid limit - not dried			Organic silt ^{K, L, M, O}
	Silts and Clays: Liquid limit 50 or more	Inorganic:	PI plots on or above “A” line	CH	Fat clay ^{K, L, M}	
			PI plots below “A” line	MH	Elastic Silt ^{K, L, M}	
		Organic:	Liquid limit - oven dried	< 0.75	OH	Organic clay ^{K, L, M, P}
			Liquid limit - not dried			Organic silt ^{K, L, M, Q}
Highly organic soils:	Primarily organic matter, dark in color, and organic odor			PT	Peat	

^A Based on the material passing the 3-inch (75-mm) sieve.

^B If field sample contained cobbles or boulders, or both, add "with cobbles or boulders, or both" to group name.

^C Gravels with 5 to 12% fines require dual symbols: GW-GM well-graded gravel with silt, GW-GC well-graded gravel with clay, GP-GM poorly graded gravel with silt, GP-GC poorly graded gravel with clay.

^D Sands with 5 to 12% fines require dual symbols: SW-SM well-graded sand with silt, SW-SC well-graded sand with clay, SP-SM poorly graded sand with silt, SP-SC poorly graded sand with clay.

$$Cu = D_{60}/D_{10} \quad Cc = \frac{(D_{30})^2}{D_{10} \times D_{60}}$$

^F If soil contains $\geq 15\%$ sand, add "with sand" to group name.

^G If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.

^H If fines are organic, add "with organic fines" to group name.

^I If soil contains $\geq 15\%$ gravel, add "with gravel" to group name.

^J If Atterberg limits plot in shaded area, soil is a CL-ML, silty clay.

^K If soil contains 15 to 29% plus No. 200, add "with sand" or "with gravel," whichever is predominant.

^L If soil contains $\geq 30\%$ plus No. 200 predominantly sand, add "sandy" to group name.

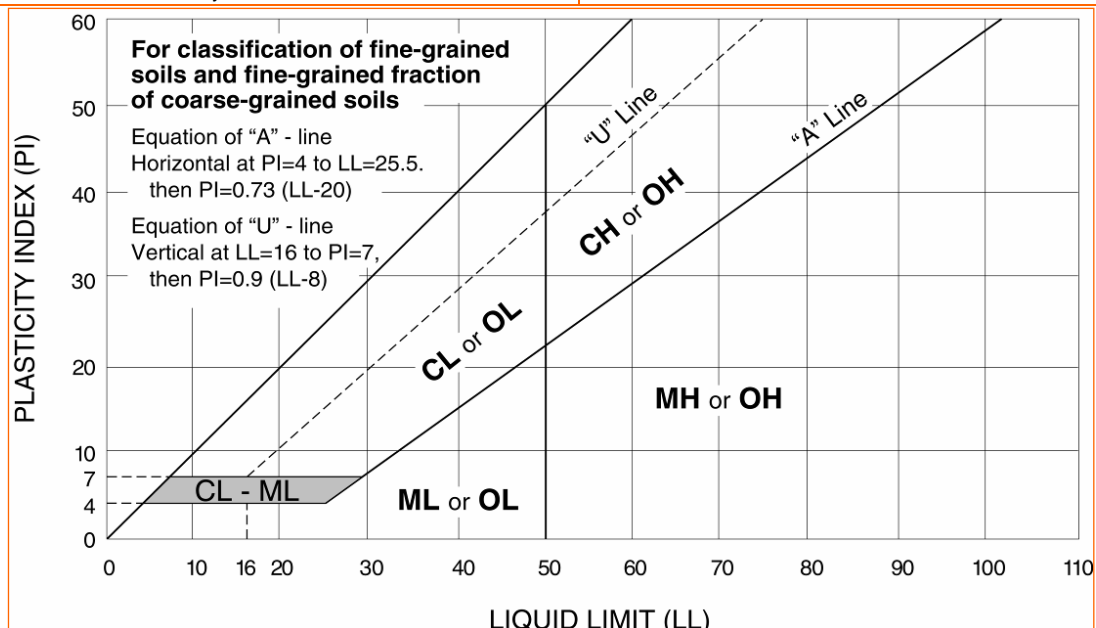
^M If soil contains $\geq 30\%$ plus No. 200, predominantly gravel, add "gravelly" to group name.

^N $PI \geq 4$ and plots on or above "A" line.

^O $PI < 4$ or plots below "A" line.

^P PI plots on or above "A" line.

^Q PI plots below "A" line.



JOSH STEIN
Governor

D. REID WILSON
Secretary

RICHARD E. ROGERS, JR.
Director



January 8, 2025

DWR # 20240417 v2
Pitt County

City of Greenville
Mark Nottingham
2000 Cedar Lane
Greenville, NC 27858

Delivered via email to: mnottingham@greenvillenc.gov

Subject: APPROVAL of TAR-PAMLICO RIPARIAN BUFFER AUTHORIZATION CERTIFICATE WITH ADDITIONAL CONDITIONS

Project: City of Greenville Town of Commons Bulkhead and Esplanade Project,

Location: 106 East First Street, Greenville NC.

Dear Mr. Nottingham:

You have our approval for the impacts listed below for the purpose described in your application dated January 8, 2025, and received by the Division of Water Resources (Division) on November 4, 2024. These impacts are covered by the Tar Pamlico Buffer Rules and the conditions listed below. This Buffer Authorization does not relieve the permittee of the responsibility to obtain all other required Federal, State, or Local approvals before proceeding with the project, including those required by, but not limited to, Sediment and Erosion Control, Non-Discharge, Water Supply Watershed, and/or Stormwater regulations.

The following impacts are hereby approved, provided that all of the Conditions listed below, and all the conditions of the Tar- Pamlico Buffer Rules are met. No other impacts are approved, including incidental impacts. [15A NCAC 02B.0611(b)(2)]

Type of Impact	Amount Approved (units) Permanent	Amount Approved (units) Temporary
Buffers – Zone 1		
Site 1 / Tar River / Bulkhead Maintenance	21, 374 (square feet)	0 (square feet)



North Carolina Department of Environmental Quality | Division of Water Resources
512 North Salisbury Street | 1617 Mail Service Center | Raleigh, North Carolina 27699-1617
919.707.9000

Buffers – Zone 2		
Site 1 / Tar River / Bulkhead Maintenance	8235 (square feet)	0 (square feet)

This approval is for the purpose and design described in your application. The plans and specifications for this project are incorporated by reference as part of this Authorization Certificate. If you change your project, you must notify the Division, and you may be required to submit a new application package. If the property is sold, the new owner must be given a copy of this Authorization Certificate and is responsible for complying with all conditions. [15A NCAC 02B.0611(b)(2)]

If you are unable to comply with any of the conditions below, you must notify the Washington Regional Office within 24 hours (or the next business day if a weekend or holiday) from the time the permittee becomes aware of the circumstances.

The permittee shall report to the Washington Regional Office any noncompliance with the conditions of this Authorization Certificate and/or any violation of state regulated riparian buffer rules [15A NCAC 02B.0734]. Information shall be provided orally within 24 hours (or the next business day if a weekend or holiday) from the time the applicant became aware of the circumstances.

Additional Conditions:

1. No impacts shall occur to Zone 1 of the protected riparian buffers [except for uses and activities designated as “exempt” within 15A NCAC 02B .0734(11).
2. This authorization exempts the Permittee from meeting Condition II.9 in the attached General Certification #4134 for the placement of in-stream structure material into Tar-Pamlico. The Permittee shall take all reasonable measures to construct in-stream structures while keeping heavy equipment out of the stream channel. Only equipment that is being used to install structures may enter the stream channel. This exemption does not authorize the use of equipment within the stream channel for any other purpose such as a haul road, access, streambank reshaping, etc. Equipment shall access the stream at the closest point possible to reduce impacts to the stream bed. Most of the stream flow shall be diverted around work areas along the stream banks such as toe protection and bank sloping. All reasonable steps must be taken to limit the amount of disturbance in the channel and therefore reduce downstream turbidity during construction. This exemption does not relieve the Permittee of meeting stream standards as indicated in 15A NCAC 02B. [15A NCAC 02H .0506(b)(1)]
3. The designer or his designer shall supervise the installation of in-stream structures. [15A NCAC 02H .0506(b)(1) and (2)]
4. The Permittee shall replant the vegetation within temporarily disturbed areas located within 30 feet of the shoreline or most landward limit of normal high-water level associated with this project in an “in kind” manner immediately following construction. (Example: Disturbed areas with pre-existing grassed lawns must be replanted with grass. Disturbed areas with pre-existing trees or woody vegetation must be replanted with trees and woody vegetation. Disturbed areas with pre-existing forest vegetation must be replanted with forest vegetation including at least two different native hardwood tree species at a density sufficient to provide 260 trees per acre



at maturity. This density can usually be achieved by planting approximately 436 (10 x 10 spacing) to 681 (8 x 8 spacing) trees per acre.) Replanting of trees/shrubs/forest must be completed by the first subsequent planting season (November 1 through March 30). Note, that if the tree plantings do not survive, they will need to be replaced such that the density is sufficient to provide 260 trees per acre at maturity. [15A NCAC 02H .0507(c), 15A NCAC 02H .0506(b)(3), and Table of Use for each buffer rule (temp roads, temporary): [15A NCAC 02B.0734(11) (ee)]

This approval and its conditions are final and binding unless contested. [G.S. 143-215.5] Upon the presentation of proper credentials, the Division may inspect the property.

This Authorization Certificate can be contested as provided in Chapter 150B of the North Carolina General Statutes by filing a Petition for a Contested Case Hearing (Petition) with the North Carolina Office of Administrative Hearings (OAH) **within sixty (60) calendar days**. Requirements for filing a Petition are set forth in Chapter 150B of the North Carolina General Statutes and Title 26 of the North Carolina Administrative Code. Additional information regarding requirements for filing a Petition and Petition forms may be accessed at <http://www.ncoah.com/> or by calling the OAH Clerk's Office at (919) 431-3000.

A party filing a Petition must serve a copy of the Petition on:

William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

If the party filing the Petition is not the permittee, then the party must also serve the recipient of the Authorization Certificate in accordance with N.C.G.S 150B-23(a).

This Authorization Certificate neither grants nor affirms any property right, license, or privilege in any lands or waters, or any right of use in any waters. This Authorization Certificate does not authorize any person to interfere with the riparian rights, littoral rights, or water use rights of any other person, nor does it create any prescriptive right or any right of priority regarding any usage of water. This Authorization Certificate shall not be interposed as a defense in any action respecting the determination of riparian or littoral rights or other rights to water use. No consumptive user is deemed by virtue of this Authorization Certificate to possess any prescriptive or other right of priority with respect to any other consumptive user.

This Authorization shall expire when the corresponding 401 Water Quality Certification Approval DWR#20240417 v2 expires on March 14, 2026.



This letter completes the Division's review under the Tar- Pamlico Riparian Buffer Rules as described in 15A NCAC 02B.0734. Please contact Paul Nyarko at 252-948-3845 or paul.nyarko@deq.nc.gov if you have any questions or concerns.

Sincerely,

Robert Tankard

Robert Tankard, Assistant Regional Supervisor
Water Quality Regional Operation Section
Division of Water Resources, NCDEQ
Washington Regional Office

Electronic cc: Doug Huggett, dhuggett@moffattnichol.com
Billy Standridge, USACE Washington Regulatory Field Office

DWR 401 & Buffer Permitting Branch electronic file

Laserfiche



**WETLAND/BUFFER
APPROVED
NORTH CAROLINA ENVIRONMENTAL
MANAGEMENT COMMISSION
DIVISION OF WATER RESOURCES**

DATE 01/08, 2025
DWR Permit No. 20240417 V2



NOTE:

TERRACON CONDUCTED THE GEOTECHNICAL ENGINEERING REPORT
"TOWN COMMONS CIVIC CENTER AND BULKHEAD GREENVILLE, PITT
COUNTY, NORTH CAROLINA" DATED FEBRUARY 11, 2022.

LEGEND:

➤ B-# APPROXIMATE BORING
LOCATION (SEE NOTE)

Greenville
NORTH CAROLINA

DATE	BY	REVISION
01/08/25	W. P. HILL	1.0

**GREENVILLE TOWN COMMONS
& EPIANDELE PROJECT**

**BORING LOCATION
SITE PLAN**

Project Information

Project No. 2024-03-xx
Issue Date: 01/08/25
Drawing Date: 01/08/25

Project Location

Project Location: Greenville, NC 27834
Project Address: 1117 W. WASHINGTON ST., GREENVILLE, NC 27834

Project Description

Project Description: TOWN COMMONS CIVIC CENTER AND BULKHEAD GREENVILLE, PITT COUNTY, NORTH CAROLINA

Project Status

Project Status: ISSUED FOR PERMIT

Project Owner

Project Owner: TOWN OF GREENVILLE

Project Engineer

Project Engineer: W. P. HILL

Project Designer

Project Designer: TERRACON

Project Checker

Project Checker: W. P. HILL

Project Approver

Project Approver: W. P. HILL

Project Signer

Project Signer: W. P. HILL

Project Seal

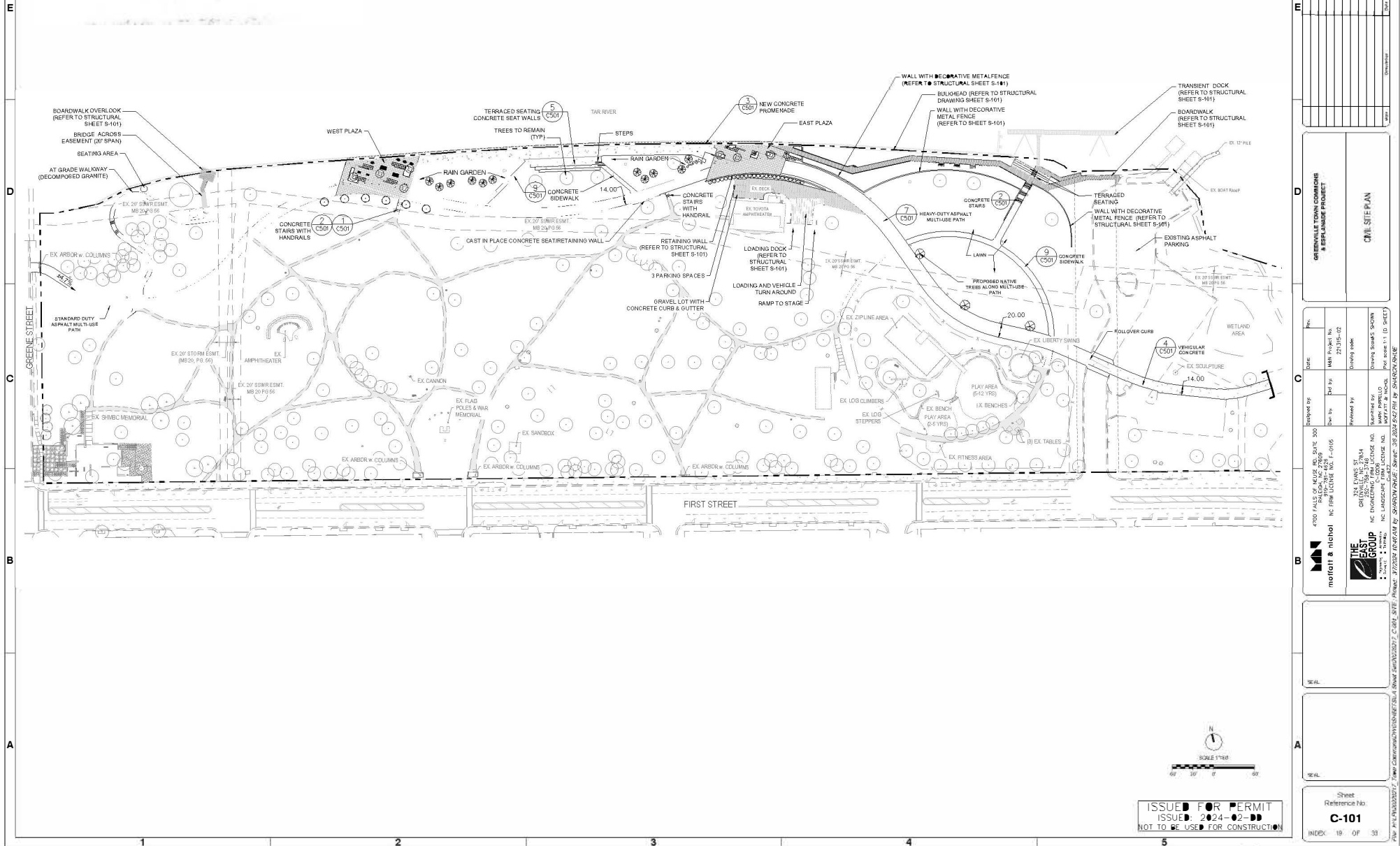
Project Seal: W. P. HILL

Project Stamp

Project Stamp: W. P. HILL

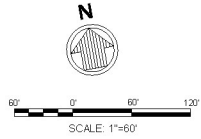
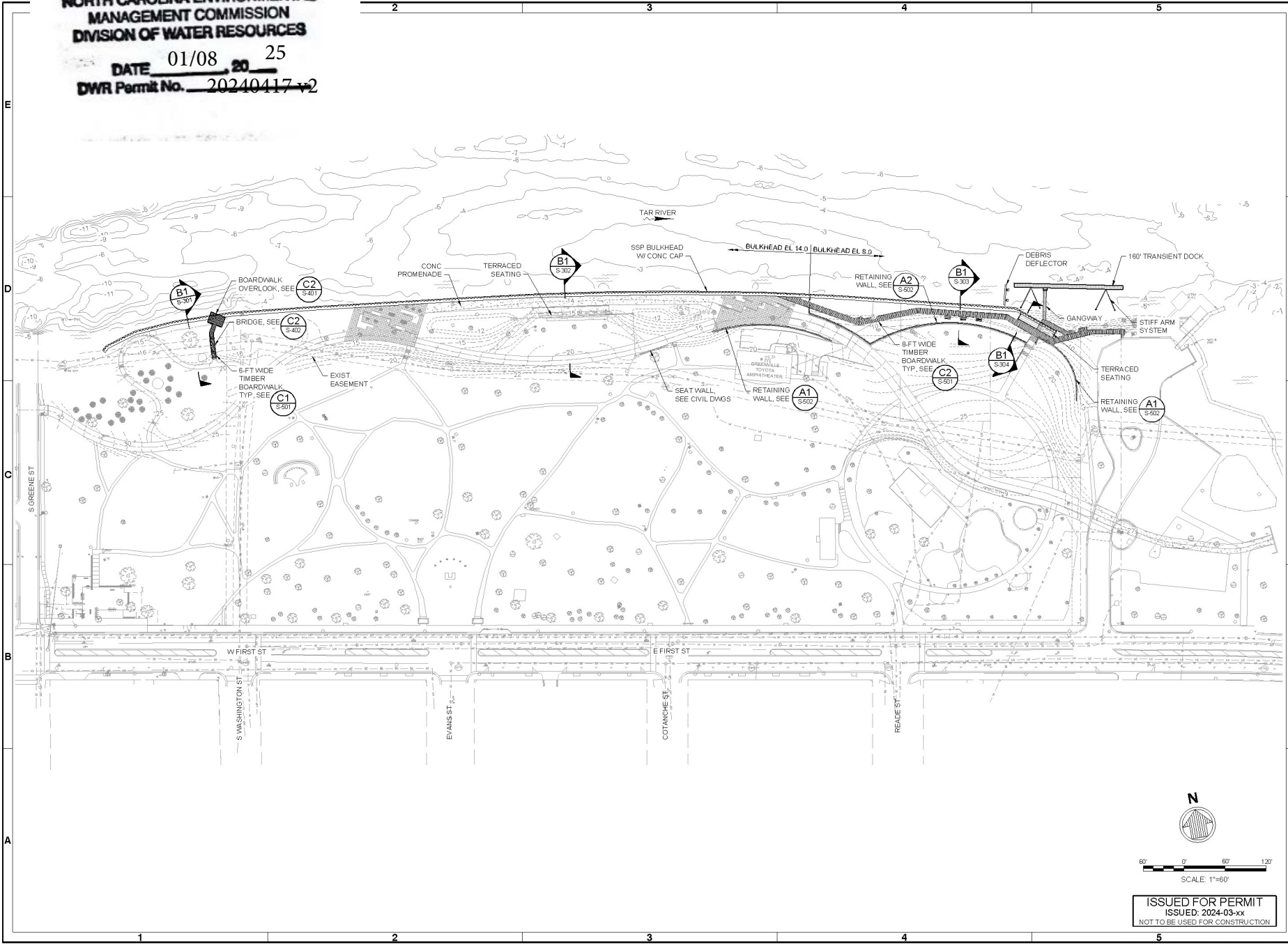
**WETLAND/BUFFER
APPROVED
NORTH CAROLINA ENVIRONMENTAL
MANAGEMENT COMMISSION
DIVISION OF WATER RESOURCES**

DATE 01/08/2025
DWR Permit No. 20240417 v2



**WETLAND/BUFFER
APPROVED
NORTH CAROLINA ENVIRONMENTAL
MANAGEMENT COMMISSION
DIVISION OF WATER RESOURCES**

DATE 01/08 25
DWR Permit No. 20240417-v2



ISSUED FOR PERMIT
ISSUED: 2024-03-xx
NOT TO BE USED FOR CONSTRUCTION

GREENVILLE TOWN COMMONS & EPLAND PROJECT	
DATE	2024-03-xx
DESIGNED BY	J. SWANSON
CHECKED BY	W. HARRIS
DATE	2024-03-xx
PROJECT NO.	2024-03-xx
PROJECT NAME	GREENVILLE TOWN COMMONS & EPLAND PROJECT
PROJECT LOCATION	GREENVILLE, NC
PROJECT OWNER	GREENVILLE TOWN
PROJECT STATUS	ISSUED FOR PERMIT

STRUCTURAL PLAN

GREENVILLE TOWN COMMONS & EPLAND PROJECT	
DATE	2024-03-xx
DESIGNED BY	J. SWANSON
CHECKED BY	W. HARRIS
DATE	2024-03-xx
PROJECT NO.	2024-03-xx
PROJECT NAME	GREENVILLE TOWN COMMONS & EPLAND PROJECT
PROJECT LOCATION	GREENVILLE, NC
PROJECT OWNER	GREENVILLE TOWN
PROJECT STATUS	ISSUED FOR PERMIT

GREENVILLE TOWN COMMONS & EPLAND PROJECT	
DATE	2024-03-xx
DESIGNED BY	J. SWANSON
CHECKED BY	W. HARRIS
DATE	2024-03-xx
PROJECT NO.	2024-03-xx
PROJECT NAME	GREENVILLE TOWN COMMONS & EPLAND PROJECT
PROJECT LOCATION	GREENVILLE, NC
PROJECT OWNER	GREENVILLE TOWN
PROJECT STATUS	ISSUED FOR PERMIT

Nationwide Permit 3
Maintenance

Effective Date: February 25, 2022 / Expiration Date: March 14, 2026
Authority: Sections 10 and 404

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built but cannot extend farther than 200 feet in any direction from the structure. This 200-foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

GENERAL CONDITIONS

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.
13. **Removal of Structures and Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. **Wild and Scenic Rivers.**

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. **Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be

necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their worldwide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring that an action authorized by NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. **Historic Properties.**

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR

800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. **Discovery of Previously Unknown Remains and Artifacts.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 5258 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the

waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. **Water Quality.**

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFF 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. **Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. **Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. **Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. **Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. **Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. **Pre-Construction Notification.**

(a) *Timing.* Where required by the terms of the NWP, the permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the pr set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4)
 - (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
 - (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse

environmental effects of the proposed linear project and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans).

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate.

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act.

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act.

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a

written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:*

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for:

(i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;

(ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and

(iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so, contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

DISTRICT ENGINEER'S DECISION

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with

the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either:

(a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or

(c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

FURTHER INFORMATION

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National

Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non- tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may

consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no

longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

REGIONAL CONDITIONS:

The following Regional Conditions have been approved by the Wilmington District for the Nationwide Permits (NWP) published in the January 13, 2021, and December 27, 2021, *Federal Register* (86 FR 2744 and 86 FR 73522) announcing the reissuance of 52 existing (NWP) and five new NWPs, as well as the reissuance of NWP general conditions and definitions with some modifications.

A. EXCLUDED WATER AND/OR AREAS

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

1. **Anadromous Fish Spawning Areas.** Work in waters of the U.S. designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are prohibited from February 15th through June 30th, without prior written approval from the Corps and the appropriate wildlife agencies (NCDMF, NCWRC and/or the National Marine Fisheries Service (NMFS)). Work in waters of the U.S. designated by NCWRC as primary nursery areas in inland waters are prohibited from February 15th through September 30th, without prior written approval from the Corps and the appropriate wildlife agencies. Work in waters of the U.S. designated by NCDMF as primary nursery areas shall be coordinated with NCDMF prior to being authorized by this NWP. Coordination with NCDMF may result in a required construction moratorium during periods of significant biological productivity or critical life stages.
2. **Trout Waters Moratorium.** Work in waters of the U.S. in the designated trout watersheds of North Carolina are prohibited from October 15th through April 15th without prior written approval from the NCWRC, or from the Eastern Band of Cherokee Indians (EBCI) Fisheries and Wildlife Management (FWM) office if the project is located on EBCI trust land. (See Section C.3. below for information on the designated trout watersheds).
3. **Sturgeon Spawning Areas.** No in-water work shall be conducted in waters of the U.S. designated by the National Marine Fisheries Service as Atlantic sturgeon critical habitat from February 1st through June 30th. No in-water work shall be conducted in waters of the U.S. in the Roanoke River designated as Atlantic sturgeon critical habitat from February 1st through June 30th, and August 1st through October 31st, without prior written approval from NMFS.
4. **Submerged Aquatic Vegetation.** Impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP, except NWP 48, NWP 55 and NWP 56, unless Essential Fish Habitat (EFH) consultation has been completed pursuant to the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Permittees shall submit a PCN (See NWP General Condition 32) to the District Engineer prior to commencing the activity if the project would affect SAV. The permittee may not begin work until notified by the Corps that the requirements of the Magnuson-Stevens Act have been satisfied and that the activity is verified.

B. REGIONAL CONDITIONS APPLICABLE TO ALL NWP's

1. **Critical Habitat in Western NC.** For proposed activities within waters of the U.S. that require a Pre-Construction Notification (PCN) and are located in the thirteen counties listed below, permittees must provide a copy of the PCN to the U.S. Fish and Wildlife Service (USFWS), 160 Zillicoa Street, Asheville, North Carolina 28801 and the Corps Asheville Regulatory Field Office. Please see General Condition 18 for specific PCN requirements

related to the Endangered Species Act and the below website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville U.S. Fish and Wildlife Service: Avery, Cherokee, Graham, Haywood, Henderson, Jackson, Macon, Mecklenburg, Mitchell, Swain, Transylvania, Union and Yancey.

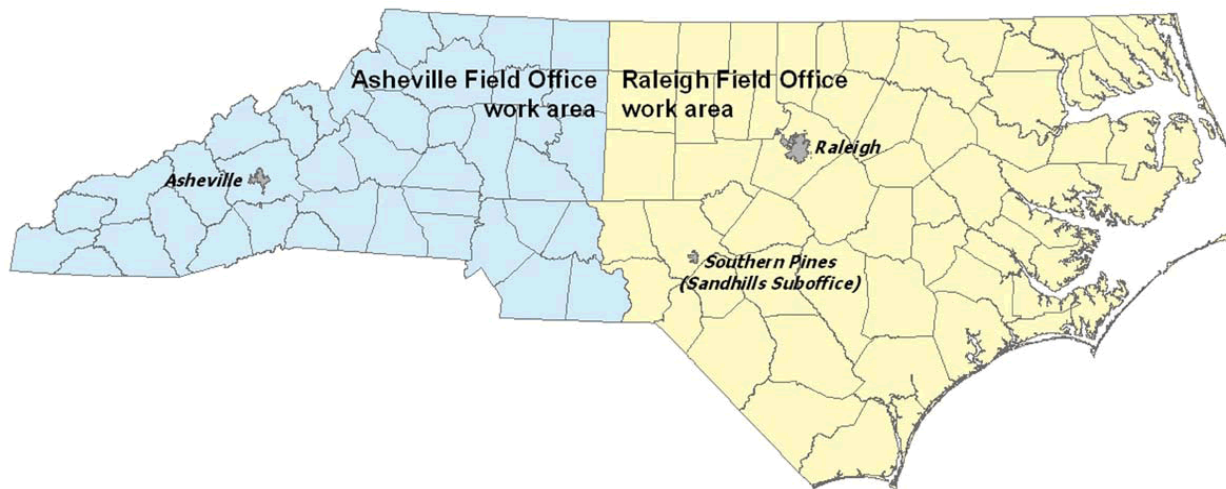
Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for permittees which provides guidelines on how to review linked websites and maps in order to fulfill NWP General Condition 18 (Endangered Species) requirements:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/AgencyCoordination/ESA.aspx>.

Permittees who do not have internet access may contact the appropriate U.S. Fish and Wildlife Service offices listed below or Corps at (910) 251-4850.

Below is a map of the USFWS Field Office Boundaries:



Asheville U.S. Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsythe and Stokes Counties.

U.S. Fish and Wildlife Service
Asheville Field Office
160 Zillicoa Street
Asheville, NC 28801
Telephone: (828) 258-3939

Raleigh U.S. Fish and Wildlife Service Office counties: All counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

U.S. Fish and Wildlife Service
Raleigh Field Office
Post Office Box 33726
Raleigh, NC 27636-3726
Telephone: (919) 856-4520

2. **Special Designation Waters.** Prior to the use of any NWP that involves a discharge of dredged or fill material in any of the following identified waters and/or adjacent wetlands in North Carolina, permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). The North Carolina waters and wetlands that require additional PCN requirements are:

“Primary Nursery Areas” (PNA), including inland PNA, as designated by the North Carolina Marine Fisheries Commission and/or the North Carolina Wildlife Resources Commission. The definition of and designated PNA waters can be found in the North Carolina State Administrative Code at Title 15A, Subchapters 3R and 10C (15A NCAC 03R .0103; 15A NCAC 10C .0502; and 15A NCAC 10C .0503) and at the following web pages:

- <http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2003%20-%20marine%20fisheries/subchapter%20r/15a%20ncac%2003r%20.0103.pdf>
- <http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2010%20-%20wildlife%20resources%20and%20water%20safety/subchapter%20c/15a%20ncac%2010c%20.0502.pdf>
- <http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2010%20-%20wildlife%20resources%20and%20water%20safety/subchapter%20c/15a%20ncac%2010c%20.0503.pdf>

3. **Trout Waters.** Prior to any discharge of dredge or fill material into streams, waterbodies or wetlands within the 294 designated trout watersheds of North Carolina, the permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity. The permittee shall also provide a copy of the PCN to the appropriate NCWRC office, or to the EBCI FWM Office (if the project is located on EBCI trust land), to facilitate the determination of any potential impacts to designated Trout Waters.

NCWRC and NC Trout Watersheds:

NCWRC Contact**	Counties that are entirely within Trout Watersheds*	Counties that are partially within Trout Watersheds*
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<p>Mountain Coordinator 645 Fish Hatchery Rd., Building B Marion, NC 28752 828-803- 6054</p> <p>For NCDOT Projects:</p> <p>NCDOT Coordinator 12275 Swift Rd. Oakboro, NC 28129 704-984- 1070</p>	<p>Alleghany Ashe Avery Graham Haywood</p>	<p>Jackson Macon Swain Transylvania Watauga</p>	<p>Burke Buncombe Caldwell Cherokee Clay Henderson Madison</p>	<p>McDowell Mitchell Polk Rutherford Surry Wilkes Yancey</p>
<p>EBCI Contact**</p>	<p>Counties that are within Trout Watersheds*</p>			
<p>Office of Natural Resources P.O. Box 1747, Cherokee, NC 28719 (828) 359-6113</p>	<p>Qualla Boundary and non- contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties.</p>			

*NOTE: To determine PCN requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps showing trout watersheds in each County at the following webpage: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Trout/>.

**If a project is located on EBCI trust land, submit the PCN in accordance with Regional Condition C.16. Contact the Corps Asheville Regulatory Field Office at (828) 271-7980 with questions.

4. **Western NC Waters and Corridors.** The permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity in waters of the U.S. if the activity will occur within any of the following identified waters in western North Carolina, within 0.5 mile on either side of these waters, or within 0.75 mile of the Little Tennessee River, as measured from the top of the bank of the respective water (i.e., river, stream, or creek):

Brasstown Creek
Burningtown Creek

Cane River
Caney Fork
Cartoogechaye Creek
Chattooga River
Cheoah River
Cowee Creek
Cullasaja River
Deep Creek
Ellijay Creek
French Broad River
Garden Creek
Hiwassee River
Hominy Creek
Iotla Creek
Little Tennessee River (within the river or within 0.75 mile on either side of this river)
Nantahala River
Nolichucky River
North Fork French Broad River
North Toe River
Nottley River
Oconaluftee River (portion not located on trust/EBCI land)
Peachtree Creek
Shooting Creek
Snowbird Creek
South Toe River
Stecoah Creek
Swannanoa River
Sweetwater Creek
Tuckasegee River (also spelled Tuckaseegee or Tuckaseigee)
Valley River
Watauga Creek
Watauga River
Wayah Creek
West Fork French Broad River

To determine PCN requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for all corridors at the following webpage:

<http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Designated-Special-Waters.aspx>.

5. **Limitation of Loss of Stream Bed.** NWP's may not be used for activities that may result in the loss of more than 0.05 acres of stream bed, except for NWP 32.

6. **Pre-Construction Notification for Loss of Stream Bed Exceeding 0.02 acres.** The permittee shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32) prior to the use of any NWP for any activity that results in the loss of more than 0.02 acres of stream bed. This applies to NWP's that do not have PCN requirements as well as those NWP's that require a PCN.

7. **Mitigation for Loss of Stream Bed.** For any NWP that results in a loss of more than 0.02 acres of stream bed, the permittee shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment, unless the

District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal. For stream bed losses of 0.02 acres or less that require a PCN, the District Engineer may determine, on a case-by-case basis, that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

8. **Riprap.** For all NWP's that allow for the use of riprap material for bank stabilization, the following conditions shall be applied:

a. Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters. The placement of filter fabric is not required if the riprap will be pushed or "keyed" into the bank of the waterbody. A waiver from the specifications in this Regional Condition must be requested in writing.

b. Riprap shall be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

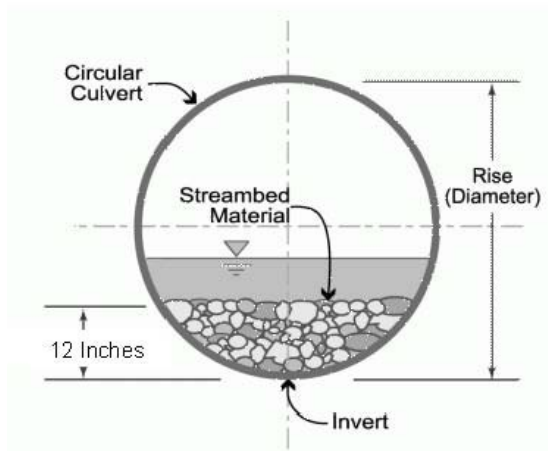
9. **Culvert Placement.** For all NWP's that allow for culvert placement, the following conditions shall be applied:

a. For all NWP's that involve the construction/installation of culverts, measures shall be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms

Placement of culverts and other structures in streams shall be below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20% of the culvert diameter for culverts having a diameter less than or equal to 48 inches. If the culvert outlet is submerged within a pool or scour hole and designed to provide for aquatic passage, then culvert burial into the streambed is not required.

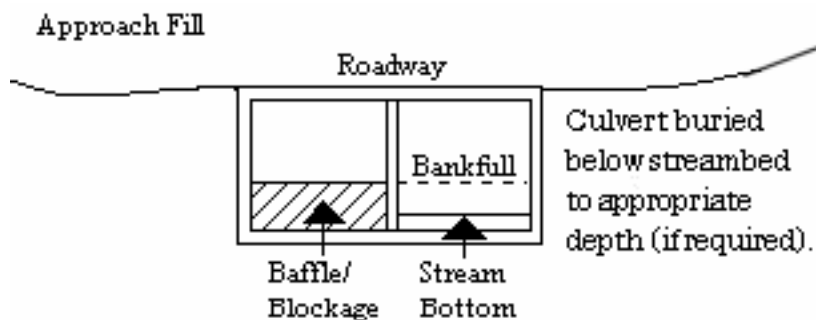
Culvert burial is not required for structures less than 72 inch diameter/width, where the slope of the culvert will be greater than 2.5%, provided that all alternative options for flattening the slope have been investigated and aquatic life movement/connectivity has been provided when possible (e.g., rock ladders, cross vanes, sills, baffles etc.). Culvert burial is not required when bedrock is present in culvert locations.

Installation of culverts in wetlands shall ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. When roadways, causeways, or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges shall be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.



A waiver from the depth specifications in this condition may be requested, in writing, by the permittee and issued by the Corp. This waiver request must be specific as to the reasons(s) for the request. The waiver will be issued if it can be demonstrated that the proposed design would result in less impacts to the aquatic environment. Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried, but the culverts must be of adequate size and/or number to ensure unrestricted transmission of water.

b. Bank-full flows (or less) shall be accommodated through maintenance of the existing bank-full channel cross sectional area. Additional culverts or culvert barrels at such crossings shall be allowed only to receive bank-full flows.



c. Culverts shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. The dimension, pattern, and profile of the stream above and below a pipe or culvert shall not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert shall be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. If the width of the culvert is wider than the stream channel, the culvert shall include multiple boxes/pipes, baffles, benches and/or sills to maintain the natural width of the stream channel. If multiple culverts/pipes/barrels are used, low flows shall be accommodated in one culvert/pipe and additional culverts/pipes shall be installed such that they receive only flows above bankfull.

10. **Utility Lines.** For all NWP's that allow for the construction and installation of utility lines, the following conditions shall be applied:

a. Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the U.S. (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

b. The work area authorized by this permit, including temporary and/or permanent fills, will be minimized to the greatest extent practicable. Justification for work corridors exceeding forty (40) feet in width is required and will be based on pipeline diameter and length, size of equipment required to construct the utility line, and other construction information deemed necessary to support the request. The permittee is required to provide this information to the Corps with the initial PCN package.

c. A plan to restore and re-vegetate wetland areas cleared for construction must be submitted with the required PCN. Cleared wetland areas shall be re-vegetated, as appropriate, with species of canopy, shrub, and herbaceous species. The permittee shall not use fescue grass or any other species identified as invasive or exotic species by the NC Native Plant Society (NCNPS): <https://ncwildflower.org/invasive-exotic-species-list/>.

d. Any permanently maintained corridor along the utility right of way within forested wetlands shall be considered a loss of aquatic function. A compensatory mitigation plan will be required for all such impacts associated with the requested activity if the activity requires a PCN and the cumulative total of permanent conversion of forested wetlands exceeds 0.1 acres, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal.

Where permanently maintained corridor within forested wetlands is 0.1 acres or less, the District Engineer may determine, on a case-by-case basis, that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

e. When directional boring or horizontal directional drilling (HDD) under waters of the U.S., including wetlands, permittees shall closely monitor the project for hydraulic fracturing or “fracking.” Any discharge from hydraulic fracturing or “fracking” into waters of the U.S., including wetlands, shall be reported to the appropriate Corps Regulatory Field Office within 48 hours. Restoration and/or compensatory mitigation may be required as a result of any unintended discharges.

11. **Temporary Access Fills.** The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 0.1 acres of wetlands or 0.02 acres of stream channel for the construction of temporary access fills and/or temporary road crossings. The PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, how pre-project conditions will be restored, and include a timetable for all restoration activities.

12. **Federal Navigation Channel Setbacks.** Authorized structures and fills located in or adjacent to Federally authorized waterways must be constructed in accordance with the latest setback criteria established by the Wilmington District Engineer. You may review the setback policy at <http://www.saw.usace.army.mil/Missions/Navigation/Setbacks.aspx>. This general permit does not authorize the construction of hardened or permanently fixed structures within the Federally Authorized Channel Setback, unless the activity is approved by the Corps. The permittee shall submit a PCN (see General Condition 32) to the District Engineer to obtain a written verification prior to the construction of any structures or fills within the Federally Authorized Channel Setback.

13. **Northern Long-eared Bat – Endangered Species Act Compliance.** The Wilmington District, U.S. Army Corps of Engineers has consulted with the United States Fish and Wildlife

Service (USFWS) in regard to the threatened northern long-eared bat (NLEB) (*Myotis septentrionalis*) and Standard Local Operating Procedures for Endangered Species (SLOPES) have been approved by the Corps and the USFWS. This condition concerns effects to the NLEB only and does not address effects to other federally listed species and/or federally designated critical habitat.

a. Procedures when the Corps is the lead federal* agency for a project:

The permittee must comply with (1) and (2) below when:

- the project is located in the western 41 counties of North Carolina, to include non-federal aid North Carolina Department of Transportation (NCDOT) projects, OR;
- the project is located in the 59 eastern counties of North Carolina and is a non-NCDOT project.

*Generally, if a project is located on private property or on non-federal land, and the project is not being funded by a federal entity, the Corps will be the lead federal agency due to the requirement to obtain Department of the Army authorization to impact waters of the U.S. If the project is located on federal land, contact the Corps to determine the lead federal agency.

(1) A permittee using an NWP must check to see if their project is located in the range of the NLEB by using the following website:

<http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>. If the project is within the range of the NLEB, or if the project includes percussive activities (e.g., blasting, pile driving, etc.), the permittee is then required to check the appropriate website in the paragraph below to discover if their project:

- is located in a 12-digit Hydrologic Unit Code area ("red HUC" - shown as red areas on the map), AND/OR;
- involves percussive activities within 0.25 mile of a red HUC.

Red HUC maps - for the western 41 counties in NC (covered by the Asheville Ecological Services Field Office), check the project location against the electronic maps found at: http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html. For the eastern 59 counties in NC (covered by the Raleigh Ecological Services Field Office), check the project location against the electronic maps found at: https://www.fws.gov/raleigh/NLEB_RFO.html.

(2) A permittee must submit a PCN to the District Engineer, and receive written verification from the District Engineer, prior to commencing the activity, if the activity will involve any of the following:

- tree clearing/removal and/or, construction/installation of wind turbines in a red HUC, AND/OR;
- bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, (applies anywhere in the range of the NLEB), AND/OR;
- percussive activities in a red HUC, or within 0.25 mile of a red HUC.

The permittee may proceed with the activity without submitting a PCN to either the Corps or the USFWS, provided the activity complies with all applicable NWP terms and general and regional conditions, if the permittee's review under A.(1) and A.(2) above shows that the project is:

- located outside of a red HUC (and there are no percussive activities), and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located outside of a red HUC and there are percussive activities, but the percussive activities will not occur within 0.25-mile of a red HUC boundary, and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located in a red HUC, but the activity will NOT include tree clearing/removal; construction/installation of wind turbines; bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, and/or; any percussive activities.

b. Procedures when the USACE is not the lead federal agency:

For projects where another federal agency is the lead federal agency - if that other federal agency has completed project-specific ESA Section 7(a)(2) consultation for the NLEB, and has (1) determined that the project would not cause prohibited incidental take of the NLEB, and (2) completed coordination/consultation that is required by the USFWS (per the directions on the respective USFWS office's website), that project may proceed without PCN to either the USACE or the USFWS, provided all General and Regional Permit Conditions are met.

The NLEB SLOPES can be viewed on the USACE website at:

<http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>. Permittees who do not have internet access may contact the USACE at (910) 251- 4633.

14. **West Indian Manatee Protection.** In order to protect the endangered West Indian manatee (*Trichechus manatus*) the Permittee shall implement the USFWS' Manatee Guidelines, and strictly adhere to all requirements therein. The guidelines can be found at <https://www.fws.gov/raleigh/pdfs/ManateeGuidelines2017.pdf>.

15. **ESA Programmatic Biological Opinions.** The Wilmington District, USFWS, NCDOT, and the FHWA have conducted programmatic Section 7(a)(2) consultation for a number of federally listed species and designated critical habitat (DCH), and programmatic consultation concerning other federally listed species and/or DCH may occur in the future. The result of completed programmatic consultation is a Programmatic Biological Opinion (PBO) issued by the USFWS. These PBOs contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" of whichever species or critical habitat is covered by a specific PBO. Authorization under NWPs is conditional upon the permittee's compliance with all the mandatory terms and conditions associated with incidental take of the applicable PBO (or PBOs), which are incorporated by reference in the NWPs. Failure to comply with the terms and conditions associated with incidental take of an applicable PBO, where a take of the federally listed species occurs, would constitute an unauthorized take by the permittee, and would also constitute permittee non-compliance with the authorization under the NWPs. If the terms and conditions of a specific PBO (or PBOs) apply to a project, the Corps will include this/these requirements in any NWP verification that may be issued for a project. For an activity/project that does not require a PCN, the terms and conditions of the applicable PBO(s) also apply to that non-notifying

activity/project. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its PBO and the ESA. All PBOs can be found on our website at: <https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>.

16. **Work on Eastern Band of Cherokee Indian Land.**

Notifying NWPs - All PCNs submitted for activities in waters of the U.S. on Eastern Band of Cherokee Indians (EBCI) trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties), must comply with the requirements of the latest MOU between the Wilmington District and the EBCI.

Non-notifying NWPs - Prior to the use of any non-notifying NWP for activities in waters of the U.S. on EBCI trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties), all prospective permittees must comply with the requirements of the latest MOU between the Wilmington District and the EBCI; this includes coordinating the proposed project with the EBCI Natural Resources Program and obtaining a Tribal Approval Letter from the Tribe.

The EBCI MOU can be found at the following URL: <http://saw-reg.usace.army.mil/FO/Final-MOU-EBCI-USACE.pdf>

17. **Sedimentation and Erosion Control Structures and Measures.**

All PCNs will identify and describe sedimentation and erosion control structures and measures proposed for placement in waters of the U.S. The structures and measures should be depicted on maps, surveys or drawings showing location and impacts to jurisdictional wetlands and streams.

C. REGIONAL CONDITIONS APPLICABLE TO NWP 3

1. In designated trout watersheds, a PCN is not required for impacts to a maximum of 0.02 acres for temporary dewatering) of streams and waterbodies when conducting maintenance activities. Minor deviations in an existing structure's configuration, temporary structures and temporary fills are authorized as part of the maintenance activity. In designated trout watersheds, the permittee shall submit a PCN (see Regional Condition C.3 above and General Condition 32) to the District Engineer prior to commencing the activity if; 1) impacts (other than temporary dewatering to work in dry conditions) to streams or waterbodies exceed 0.008 acres; 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceeds 0.02 acres; 3) the project will involve impacts to wetlands; 4) the project involves the replacement of a bridge or spanning structure with a culvert or non-spanning structure in waters of the United States; or 5) the activity will be constructed during the trout waters moratorium (October 15 through April 15).

D. SECTION 401 WATER QUALITY CERTIFICATION (WQC) AND/OR COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY DETERMINATION SUMMARY AND APPLICABLE CONDITIONS

The CZMA Consistency Determination and all Water Quality Certifications for the NWPs can be found at: <https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Permits/2017-Nationwide-Permits/>

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403-1343
<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

General Permit No. 197800056
Name of Permittee: General Public
Effective Date: January 1, 2022
Expiration Date: December 31, 2026

**DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT (RGP)**

A RGP to perform work in or affecting navigable waters of the U.S. and waters of the U.S., upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby modified and renewed by authority of the Secretary of the Army by

District Engineer
U.S. Army Engineer District, Wilmington
Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403-1343

TO MAINTAIN, REPAIR, CONSTRUCT AND INSTALL PIERS, DOCKS, BOATHOUSES AND BOAT SHELTERS, PILINGS, MOORING BOUYS, DOLPHINS, JETTIES, GROINS, AND BREAKWATER STRUCTURES IN NAVIGABLE WATERS OF THE U.S. IN THE STATE OF NORTH CAROLINA.

Projects must be constructed in conformance with the following standards in order to be authorized by this RGP.

1. All piers, docks, boathouses, and boat shelters will be pile-supported or floating structures.
2. Pilings, dolphins, jetties, and breakwater structures may be constructed of wood, metal, or pre-cast concrete. Groins may be constructed of wood, pre-cast concrete, or rock riprap.
3. Breakwater structures will be designed to provide for adequate water circulation landward of the structures.

This RGP does not authorize dredging or excavation, or the discharge of dredged, excavated, or fill material within waters of the U.S., except for the placement of

structures for jetty, breakwater, or groin construction. This RGP does not authorize any work on Atlantic Ocean beaches.

The following definitions will be used for purposes of this RGP:

a. Mean high water mark (MHW): The line on the shore, in tidal water, reached by the plane of the mean (average) high water. The precise determination of the actual location of the line can be established by survey with the reference to the available tidal datum, preferably averaged over a period of 18.6 years. A less precise method, such as observation of the apparent shoreline, which is determined by reference to physical markings, lines of vegetation, may be used for the purpose of this permit.

b. Ordinary High Water Mark (OHWM): The line on the shore, in non-tidal waters, established by the fluctuations of water indicated by physical characteristics such as clear, natural line impressed on the bank; shelving changes in the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

Special Conditions

a. Authorized structures located on or adjacent to Federally authorized waterways will be constructed in accordance with the latest setback criteria established by the Wilmington District Engineer. You may review the setback policy at <http://www.saw.usace.army.mil/Missions/Navigation/Setbacks.aspx>. This RGP does not authorize the construction of hardened or permanently fixed structures within the Federally Authorized Channel Setback, unless the activity is approved by the Corps. The Permittee must submit the information described in General Condition “y” and obtain approval from the Corps prior to the construction of any structures within the Federally Authorized Channel Setback.

b. Floating structures installed within the Federally Authorized Channel Setback must be designed to be removable. No utilities or infrastructure shall be permanently fixed/attached to floating structures located within the Federally Authorized Channel Setback. The Permittee must submit the information described in General Condition “y” and obtain approval from the Wilmington District Corps of Engineers (Corps) prior to the construction of any structures within the Federally Authorized Channel Setback.

c. This RGP does not authorize construction across or into any natural or manmade channel or waterbody in any manner that may adversely affect navigation by the general public.

d. Piers, docks, boathouses, boat shelters and piles authorized by this RGP may be extended or be located up to 400 feet waterward of the Mean High Water Mark (MHW) elevation contour (tidal areas), or the Ordinary High Water Mark (OHWM) elevation contour (non-tidal areas), or one-third (1/3) the width of a waterbody,

whichever is closer to the shoreline, except as otherwise governed by the presence of a Federally maintained channel.

e. The width of any pier will not exceed six (6) feet, unless the Corps determines, in writing, that a greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur.

f. The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. The maximum size of any individual component of the docking facility (excluding the pier) authorized by this RGP shall not exceed 400 square feet unless the Corps determines, in writing, that a greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur.

g. Boathouses and boat shelters will not be enclosed and will not exceed 400 square feet. Boatlifts will be open and will not exceed 400 square feet.

h. Boathouses, boatlifts, boat shelters and will not be constructed over Federally jurisdictional wetlands.

i. Docks and piers extending over wetlands will be elevated sufficiently (minimum of 3 feet) above the wetland substrate to prevent total shading of vegetation, substrate, or other elements of the aquatic environment.

j. Groins, jetties, or breakwater structures shall not be constructed in wetlands, seagrasses, and other submerged aquatic vegetation.

k. Piers and docking facilities located over submerged aquatic vegetation may be constructed without prior consultation from the National Marine Fisheries Service if the following two conditions are met:

1) Water depth at the docking facility location is equal to or greater than two feet at mean low water level: and

2) The pier and docking facility are located to minimize the area of submerged aquatic vegetation under the structure.

l. Floating piers and docking facilities located over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at mean low water level.

m. Jetties will not extend farther than 100 feet waterward of the MHW (tidal areas), or the OHWM elevation contours.

- n. This RGP does not authorize the installation of fueling facilities on authorized structures.
- o. Riprap groins shall not exceed a base width of 10 feet.
- p. Riprap groins must be constructed of clean rock or masonry material and be of sufficient size to prevent displacement by wave or current action.
- q. No groin shall extend more than 25 feet waterward of the mean high water or normal water level elevation contour.
- r. Groins and jetties shall not be located within primary nursery areas.
- s. No jetty shall be constructed during the period between April 1 and September 30 unless the activity is approved by NCDMF and the NMFS.
- t. Floating structures will be supported by material that will not become waterlogged or sink when punctured, will be installed to provide for fluctuations in water elevation, will be designed so that the structure will not rest on the bottom of the waterbody at any time, and will be secured in such manner as to not break away.
- u. Breakwater structures will be no longer than 500 feet. They will have a minimum of one-inch openings between standard width (6 to 12-inch) sheathing boards and at least one, five-foot wide opening for each 100 linear feet of structure.
- v. Breakwater structures may not be constructed so as to prohibit access to estuarine waters or public trust areas.
- w. It is possible that the authorized structure may be damaged by wave wash from passing vessels. The issuance of this permit does not relieve the Permittee from taking all proper steps to ensure the integrity of the permitted structure and the safety of moored boats. The Permittee will not hold the US liable for any such damage.
- x. This RGP does not authorize habitable structures or any structure or associated facility for non-water related use.
- y. Structures and their attendant utilities, authorized by this RGP, located on lands subject to an easement in favor of the US for the operation, maintenance, improvement, and enlargement of the Atlantic Intracoastal Waterway (AIWW), will be removed at the expense of the Permittee, in the event that, in the judgment of the U.S. Army Corps of Engineers acting on behalf of the US, the lands are needed at any time for any purpose within the scope of the easement. Permanent buildings will not be constructed within the easement.
- z. This RGP does not apply to structures within existing or proposed marinas as defined by North Carolina Administrative Code, Title 15, Subchapter 7H.0208(b)(5).

aa. Should all or part of a proposed development activity be located in an Area of Environmental Concern (AEC) as designated by the North Carolina Coastal Resources Commission, a Coastal Area Management Act (CAMA) permit is required from the North Carolina Division of Coastal Management before the onset of the proposed activity. Should a Federal activity within any of North Carolina's twenty coastal counties or which could affect a coastal use or resource in any of North Carolina's twenty coastal counties be proposed by a Federal agency, a consistency determination pursuant to Subpart "C" of 15 CFR 930 must be prepared and submitted by that Federal agency to the North Carolina Division of Coastal Management before the onset of the proposed activity.

General Conditions.

a. Except as authorized by this RGP or any Corps approved modification to this RGP, no excavation, fill or mechanized land-clearing activities shall take place within waters or wetlands, at any time in the construction or maintenance of this project. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.

b. Authorization under this RGP does not obviate the need to obtain other federal, state, or local authorizations.

c. All work authorized by this RGP must comply with the terms and conditions of the applicable Clean Water Act Section 401 Water Quality Certification for this RGP issued by the North Carolina Division of Water Resources.

d. The Permittee shall employ all sedimentation and erosion control measures necessary to prevent an increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).

e. The activities authorized by this RGP must not interfere with the public's right to free navigation on all navigable waters of the U.S. No attempt will be made by the Permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work for a reason other than safety.

f. The Permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the

navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.

g. The Permittee, upon receipt of a notice of revocation of the permit for the verified individual activity, may apply for an individual permit, or will, without expense to the US and in such time and manner as the Secretary of the Army or his/her authorized representative may direct, restore the affected water of the US to its former conditions.

h. This RGP does not authorize any activity that would conflict with a federal project's congressionally authorized purposes, established limitations or restrictions, or limit an agency's ability to conduct necessary operation and maintenance functions. Per Section 14 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 408), no project that has the potential to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, or obstruct a federally constructed work or project, including, but not limited to, levees, dams, jetties, navigation channels, borrow areas, dredged material disposal sites, flood control projects, etc., shall be permitted unless the project has been reviewed and approved by the appropriate Corps approval authority. The Permittee must submit the information described in General Condition "y" and obtain approval from the Wilmington District Engineer prior to the initiation of any activity that has the potential to modify or conflict with a federally authorized project.

i. The Permittee shall obtain a Consent to Cross Government Easement from the Wilmington District's Land Use Coordinator prior to any crossing of the Corps easement and/or prior to commencing construction of any structures, authorized dredging or other work within the right-of-way of, or in proximity to, a federally designated disposal area. The Land Use Coordinator may be contacted at: CESAW-OP-N, 69 Darlington Avenue, Wilmington, North Carolina 28403-1343, email: SAWWeb-NAV@usace.army.mil.

j. The Permittee will allow the Wilmington District Engineer or his/her representative to inspect the authorized activity at any time deemed necessary to assure that the activity is being performed or maintained in strict accordance with the Special and General Conditions of this permit.

k. This RGP does not grant any property rights or exclusive privileges.

l. This RGP does not authorize any injury to the property or rights of others.

m. This RGP does not authorize the interference with any existing or proposed federal project.

n. In issuing this RGP, the Federal Government does not assume any liability for the following:

- (1) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- (2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the US in the public interest.
- (3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RGP.
- (4) Design or construction deficiencies associated with the permitted work
- (5) Damage claims associated with any future modification, suspension, or revocation of this RGP.

o. Authorization provided by this RGP may be modified, suspended, or revoked in whole or in part if the Wilmington District Engineer, acting for the Secretary of the Army, determines that such action would be in the best public interest. The term of this RGP shall be five (5) years unless subject to modification, suspension, or revocation. Any modification, suspension or revocation of this authorization will not be the basis for any claim for damages against the US Government.

p. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or “study river” (e.g., National Park Service, U.S. Forest Service, etc.)

q. This RGP does not authorize any activity within, or directly affecting, a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, unless the Permittee provides the Corps with a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act. Information on marine sanctuaries may be obtained at <http://sanctuaries.noaa.gov/#MN>. Permittees may not begin work until they provide the Corps with a written certification from the Department of Commerce.

r. In cases where the Wilmington District Engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places and its codified regulations, the National Historic Preservation Amendment Acts of 1980 and 1992, the Abandoned Shipwreck Act of 1987 and the Native American Graves Protection and Repatriation Act, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. Permittees must submit the information described in General Condition “y” to the Corps if any properties subject

to the above criteria may be affected by the proposed project. The Permittee may not begin work until notified by the Corps that the requirements of the NHPA have been satisfied and that the activity is authorized.

s. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the Wilmington District Engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Wilmington District Engineer will initiate the Federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

t. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any RGP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed*. Information on threatened and endangered species and their critical habitat can be obtained directly from the Corps field offices, the USFWS field offices or at the following web addresses: <http://www.fws.gov/> or <http://www.fws.gov/ipac/> or <http://www.noaa.gov/fisheries.html>. Permittees must submit the information described in General Condition “y” to the Corps if any listed species or designated critical habitat may be affected by the proposed project. Permittees may not begin work until notified by the Wilmington District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized.

*Note - Section 7 consultation has been completed for the West Indian Manatee and if the activity may affect the manatee, the Permittee does not have to submit the information in General Condition “y” to the District Engineer as long the Permittee complies with General Condition “u”. Section 7 consultation has been completed for the Northern long-eared bat and the Permittee must submit the information described in General Condition “y” to the District Engineer prior to commencing the activity if the project meets the criteria in General Condition “v”.

u. In order to further protect the endangered West Indian Manatee (*Trichechus manatus*), the Permittee must implement the USFWS’ Manatee Guidelines, and strictly adhere to all requirements therein. The guidelines can be found at <https://www.fws.gov/raleigh/pdfs/ManateeGuidelines2017.pdf>.

v. The Wilmington District, U.S. Army Corps of Engineers (Corps) has consulted with the US Fish and Wildlife Service (Service) in regard to the threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and Standard Local Operating Procedures for Endangered Species (SLOPES) have been approved by the Corps and the Service. This condition concerns effects to the NLEB only and does not address effects to other federally listed species and/or to federally-designated critical habitat.

A. Procedures when the Corps is the lead federal* agency for a project:

The Permittee must comply with (1) and (2) below when:

- The project is located in the western 41 counties of North Carolina, to include non-federal aid North Carolina Department of Transportation (NCDOT) projects, OR;
- The project is located in the 59 eastern counties of North Carolina and is a non-NCDOT project.

*Generally, if a project is located on private property or on non-federal land, and the project is not being funded by a federal entity, the Corps will be the lead federal agency due to the requirement to obtain Department of the Army authorization to impact waters of the U.S. If the project is located on federal land, contact the Corps to determine the lead federal agency.

(1) A Permittee using a RGP must check to see if their project is located in the range of the NLEB by using the following website:
<http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>. If the project is within the range of the NLEB, or if the project includes percussive activities (e.g., blasting, pile driving, etc.), the Permittee is then required to check the appropriate website in the paragraph below to discover if their project:

- Is located in a 12-digit Hydrologic Unit Code area (“red HUC” - shown as red areas on the map), AND/OR;
- Involves percussive activities within 0.25 mile of a red HUC.

Red HUC maps - for the western 41 counties in NC (covered by the Asheville Ecological Services Field Office), check the project location against the electronic maps found at: http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html. For the eastern 59 counties in NC (covered by the Raleigh Ecological Services Field Office), check the project location against the electronic maps found at: https://www.fws.gov/raleigh/NLEB_RFO.html.

(2) A Permittee must submit a pre-construction notification (PCN) to the district engineer, and receive written authorization from the district engineer, prior to commencing the activity, if the activity will involve either of the following:

- Tree clearing/removal, construction/installation of wind turbines in a red HUC, AND/OR;
- Bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, (applies anywhere in the range of the

NLEB), AND/OR:

- Percussive activities in a red HUC, or within 0.25 mile of a red HUC.

The Permittee may proceed with the activity without submitting a PCN to either the Corps or the USFWS, provided the activity complies with all applicable RGP terms and general and special conditions, and if the Permittee's review under A.(1) and A.(2) above shows that the project is:

- Located outside of a red HUC (and there are no percussive activities), and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- Located outside of a red HUC and there are percussive activities, but the percussive activities will not occur within 0.25-mile of a red HUC boundary, and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- Located in a red HUC, but the activity will NOT include tree clearing/removal; construction/installation of wind turbines; bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, and/or; any percussive activities.

B. Procedures when the Corps is not the lead federal agency:

For projects where another federal agency is the lead federal agency - if that other federal agency has completed project-specific ESA Section 7(a)(2) consultation for the NLEB, and has (1) determined that the project would not cause prohibited incidental take of the NLEB, and (2) completed coordination/consultation that is required by the Service (per the directions on the respective Service office's website), that project may proceed without notification to either the Corps or the Service, provided all RGP general and special conditions are met.

The NLEB SLOPES can be viewed on the Corps website at the following World Wide Web Page: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>. Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

w. The Wilmington District, USFWS, NCDOT, and the FHWA have conducted programmatic Section 7(a)(2) consultation for a number of federally listed species and habitat, and programmatic consultation concerning other federally listed species and/or habitat may occur in the future. The result of completed programmatic consultation is a Programmatic Biological Opinion (PBO) issued by the USFWS. These PBOs contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" of whichever species or critical habitat is covered by a specific PBO. Authorization under this RGP is conditional upon

the permittee's compliance with all the mandatory terms and conditions associated with incidental take of the applicable PBO (or PBOs), which are incorporated by reference in this RGP. Failure to comply with the terms and conditions associated with incidental take of an applicable PBO, where a take of the federally listed species occurs, would constitute an unauthorized take by the permittee, and would also constitute permittee non-compliance with the authorization under this RGP. If the terms and conditions of a specific PBO (or PBOs) apply to a project, the Corps will include this/these requirements in any RGP verification that may be issued for a project. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its PBO, and with the ESA. All PBOs can be found on our website at:

<https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>

x. If the Permittee discovers or observes any live, damaged, injured or dead individual of an endangered or threatened species during construction, the Permittee shall immediately notify the Wilmington District Engineer so that required coordination can be initiated with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

y. For activities that require approval from the Corps prior to initiating any work, the Permittee must submit the following information to the appropriate Corps Regulatory Field Office. You may apply online at https://edocs.deq.nc.gov/Forms/Pre-Construction_Notification_Form.

1. Name, address, email and/or telephone number of the prospective Permittee.
2. Location of the proposed project, including waterbody, nearest community, and county.
3. A detailed description of the proposed project, including applicable project details such as width, height, length of structures or fills, piling span, distance from the shoreline, type of materials, location of structure(s), and the amount of proposed impact to waters and/or wetlands. The description must be sufficiently detailed to allow the Wilmington District Engineer to determine that the adverse effect of the project will be minimal and to determine the need for compensatory mitigation. Project drawings must be provided when necessary to show that the activity complies with the terms of the RGP. (Drawings usually clarify the project and when provided results in a quicker decision. Drawings must contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans).

z. Permittees are advised that development activities in or near a floodway may be subject to the National Flood Insurance Program that prohibits any development, including fill, within a floodway that results in any increase in base flood elevations.

This RGP does not authorize any activity prohibited by the National Flood Insurance Program.

aa. The Permittee must install and maintain, at his/her expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities. For further information, the Permittee should contact Coast Guard Sector North Carolina at (910) 772-2191 or email Coast Guard Fifth District at cgd5waterways@uscg.mil.

bb. The Permittee must maintain any structure or work authorized by this permit in good condition and in conformance with the terms and conditions of this permit. The Permittee is not relieved of this requirement if the Permittee abandons the structure or work. Transfer in fee simple of the work authorized by this permit will automatically transfer this permit to the property's new owner, with all of the rights and responsibilities enumerated herein. The Permittee must inform any subsequent owner of all activities undertaken under the authority of this permit and provide the subsequent owner with a copy of the terms and conditions of this permit.


cc. At his sole discretion, any time during the processing cycle, the Wilmington District Engineer may determine that this RGP will not be applicable to a specific proposal. In such case, the procedures for processing an individual permit in accordance with 33 CFR 325 will be available.

dd. Except as authorized by this RGP or any Corps approved modification to this RGP, all fill material placed in waters or wetlands shall be generated from an upland source and will be clean and free of any pollutants except in trace quantities. Metal products, organic materials (including debris from land clearing activities), or unsightly debris will not be used.

ee. Except as authorized by this RGP or any Corps approved modification to this RGP, all excavated material will be disposed of in approved upland disposal areas.

ff. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RGP will remain authorized provided the activity is completed within twelve months of the date of the RGP's expiration, modification, or revocation. Activities completed under the authorization of this RGP that were in effect at the time the activity was completed continue to be authorized by the RGP.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:


Benjamin A. Bennett
Colonel, U.S. Army
District Commander

Prepared For:



CITY OF GREENVILLE (CITY)
2000 CEDAR LANE
GREENVILLE, NORTH CAROLINA 27858

**CITY OF GREENVILLE
GREENVILLE TOWN COMMON & ESPLANADE PROJECT
GREENVILLE, NORTH CAROLINA**

ISSUED FOR BID

M&N PROJECT NO. 221315-02

MARCH 24, 2025

Submitted By:



moffatt & nichol

*4700 Falls of Neuse Road, Suite 300
Raleigh, North Carolina 27609
919-781-4626
M&N Project No. 221315-02
NC Firm License No. F-0105*

SECTION 00 11 13 – ADVERTISEMENT FOR BIDS

The Greenville Recreation and Parks Department (GRPD) will accept bids for the Town Common Bulkhead and Esplanade project on **April 15, 2025**. Sealed Proposals will be received by the City in the Jaycee Park Meeting Room, 2000 Cedar Lane, Greenville, NC 27858, at 2:00pm (Eastern Standard Time) and publicly opened thereafter at 2:00pm. Bids shall be marked "Sealed Bid", addressed to the attention of Mark Nottingham, Greenville Project Management Department, and shall include the Name, Address, and License Number of the bidder, and the type of proposal enclosed.

Complete plans and specifications for the project will be available from the City of Greenville website at <https://www.greenvillenc.gov/government/financial-services/current-bid-opportunities> for download. The City Council of the City of Greenville reserves the right to reject any or all proposals.

The deadline for contractors to submit questions is **April 3, 2025** at 5:00 pm. All contractor questions shall be formally submitted via email to Jeffrey Swyers (jswyers@moffattnichol.com). Formal responses to questions and any required project addendum will be provided to all contractors by **April 7, 2025** at 5:00 pm via the City of Greenville website.

Owner:
Mark Nottingham
City of Greenville Project Management Department
2000 Cedar Lane
Greenville, NC 27858
(252) 329-44242
mnottingham@greenvillenc.gov

Engineer:
Moffatt & Nichol
4700 Falls of Neuse Rd, Suite 300
Raleigh, NC 27609
(919) 781-4626

END OF SECTION 00 11 13

SECTION

A

SECTION 00 21 13 – INSTRUCTIONS TO BIDDERS

PART 1 - GENERAL

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

- 1.8 General Contractors are notified that Chapter 87, Article 1, General Statutes of North Carolina will be observed in receiving and awarding general contracts. General contractors submitting bids on this project must have license classification for general contractor.
- A. NOTE: Under GS 87-1, a contractor that superintends or manages construction of any building, highway, public utility, grading, structure, or improvement shall be deemed a "general contractor" and shall be so licensed. Therefore, a single prime project that involves other trades will require the single prime contractor to hold a proper General Contractors license.
- 1.9 Except to the extent allowed by statute, bids shall not be withdrawn and bids shall remain subject to acceptance by the City for a period of 90 days.
- 1.10 Bidders must present satisfactory evidence that they have been regularly engaged in the business of constructing such work, and that they are fully prepared with the necessary capital, equipment, etc., to begin the work promptly, and complete the same in accordance with specifications.
- 1.11 The bids will be evaluated and the contract awarded in accordance with statutory public contract requirements as supplemented or altered by the Minority and / or Women Business Enterprise (M/WBE) requirements supplied with this bid package. These forms must be filled out and returned with the bid proposal. Any bids submitted without these completed forms shall be deemed as "non-responsive". If there are any questions or problems filling out these forms, please contact:
- A. Wanda House, Financial Services Manager 252-329-4862
- 1.12 The City of Greenville, NC in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby 1178814- v4 7 notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this advertisement and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- 1.13 The successful bidder is required to commence work within ten (10) written days after written notice from the Project Manager. Termination of work shall also be controlled by the City of Greenville.
- 1.14 The contractor will furnish all materials, labor, equipment, supervision, tools, machinery, etc. for complete construction of projects in accordance with plans and specifications of the City of Greenville.
- 1.15 The bidder to whom the award is made shall be required to furnish work crews of adequate number, size, and experience to properly perform the work. The interpretation of the number of crews, size, and experience will be determined by the City of Greenville as to their adequacy.

- 1.16 It shall be the responsibility of the contractor to obtain all necessary and required permits and inspections. These permits shall be presented upon demand.
- 1.17 The Contractor will perform, or have performed, all necessary site layout (both lines and grades) for this construction.
- 1.18 The Contractor must provide the City of Greenville a safety plan of their organization, prior to approval of the contract.
- 1.19 The following standard documents shall be used for their intended purposes unless the Owner consents to use other forms:
- A. Standard Form of Agreement Between Owner and Contractor
 - B. General Conditions of the Contract for Construction.
- 1.20 The contractor(s) to whom the award is made must carry insurance in the amounts and types outlined in the Insurance Requirements section of this document.
- 1.21 The insurance herein required shall be with an insurance company authorized to do business in North Carolina and having a BEST rating of A or better.
- 1.22 Insurance shall be evidenced by a certificate:
- A. Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
 - B. Certificates should be addressed to:
 - 1. City of Greenville Project Management Department Attn:
Mark Nottingham
2000 Cedar Lane
Greenville, NC 27858
- 1.23 **INSURANCE:**
- The Contractor agrees to purchase at its own expense insurance coverages to satisfy the following minimum requirements. Work under this contract shall not commence until all insurance required as listed has been obtained. Insurance required shall remain in effect through the life of this contract.
- A. **Worker's Compensation Insurance**
- No contractor or subcontractor may exclude executive officers. Workers Compensation must include all employees.

Limits: Workers Compensation: Statutory for the State of North Carolina.

Employers Liability:	
Bodily Injury by Accident	\$1,000,000 each accident.
Bodily Injury by Disease	\$1,000,000 policy limit.
Bodily Injury by Disease	\$1,000,000 each employee.

B. Commercial General Liability:

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

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

C. Commercial Automobile Liability:

Limits:	\$1,000,000 combined single limit.
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D. Cancellation:

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the assured of such alteration or cancellation, sent registered mail.

E. Proof of Carriages:

1. The Contractor shall provide the City with insurance industry standard ACCORD form Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the City prior to the commencement of services. Said policies shall provide that the City be an additional named insured.
2. The City shall be notified in writing of any reduction, cancellation, or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action.
3. All insurance policies shall be issued by responsible companies who are acceptable to the City and licensed and authorized to do business under the laws of North Carolina

1.24 Hold Harmless and Indemnity Agreement:

- A. To the fullest extent permitted by law, Company shall indemnify and hold harmless the City, its employees, agents, and consultants against any liability arising out of or in connection with any of the operations or obligations of Company, including but not limited to any said operations or obligations subcontracted or assigned to a different person or entity from claims, damages, losses, and expenses, including but not limited to attorneys' fees, which is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, caused by acts or omissions of Company or anyone directly or indirectly employed by them or anyone for whose acts the Company may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligation of indemnity which would otherwise exists as to a party or person described in this paragraph.
- 1.25 The successful bidder is required to commence work within ten (10) written days after written notice from the Project Manager. The City of Greenville shall also control termination of work.
- 1.26 All new vendors, including subcontractors/consultants, must register with the City of Greenville's online portal prior to the rendering of goods or services.
 - A. Registration as a vendor with the City of Greenville is the responsibility of prime or subcontractor/consultant, and requires the prospective new vendor to submit a W-9, and complete the registration through the City's vendor portal at the following web address: <https://selfservice.greenvillenc.gov/vss/Vendors/default.aspx>
 - B. If the prospective new vendor is only providing service(s) as a subcontractor/consultant, submission of payment information is not necessary at the time of registration.
- 1.27 The general contractor is responsible for ensuring all subcontractors working on the project are registered as vendors with the City of Greenville and have active registrations prior to contract award.
- 1.28 The general contractor must provide total amounts paid to MWBE subcontractors with each payment application/invoice.
- 1.29 Unit Prices: All unit prices shall be bid. Unit Prices shall be net, no profit or overhead shall be added or deducted when applying Unit Prices to the contract sum adjustments.
- 1.30 All work under this contract shall be completed within four hundred (400) days from the date of the Notice to Proceed.
- 1.31 E-VERIFY COMPLIANCE: The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a Subcontractor, the Contractor shall require the Subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. By submitting a proposal, The Proposer represents that their firm and its Subcontractors are in compliance with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.

- 1.32 IRAN DIVESTMENT ACT: Vendor certifies that: (i) it is not on the Iran Final Divestment List created by the NC State treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any actions causing it to appear on said list during the term of any contract with the City, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on said list.
- 1.33 Any questions regarding the Contract Conditions and Bid Documents should be directed to Moffatt & Nichol, in writing by email to Jeff Swyers, jswyers@moffattnichol.com.

END OF SECTION 00 21 13

(USE THIS FORM ONLY)

SUBMIT PROPOSALS IN CARE OF:

Project Management Department
City of Greenville
2000 Cedar Lane
Greenville, NC 27858
(252) 329-4242

BIDDER'S FIRM NAME TRADER CONSTRUCTION Co.

DATE: 4/15/2025

PROPOSAL: Town Common Bulkhead and Esplanade Project

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

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

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

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

Base Bid:

(\$ 12,968,800.00) TWELVE MILLION NINE HUNDRED SIXTY dollars
EIGHT THOUSAND , EIGHT HUNDRED AND 00/100 —

ADDENDA

The following addenda are acknowledged as having been received and noted, the provisions for which are included in the proposal(s). Failure to acknowledge receipt of any addenda will subject the bidder to disqualification. CONTRACTOR to sign.

Addendum No. 1: 4/7/2025 (Prior Addendum 1, 2, 3, DATED
Addendum No. 2: 2/28/25, 3/7/25, 3/14/25
Addendum No. 3: ACKNOWLEDGED)
Addendum No. 4: _____

ALTERNATES

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

Alternate No. 1 (Floating Dock & Debris Deflector): \$520,600.00

Alternate No. 2 (Nature Walk): \$220,500.00

Alternate No. 3 (Timber Bridge & Overlook Platform): \$427,600.00

Alternate No. 4 (Decorative Fountain, \$200,000 Design and Construction Allowance):
\$200,000.00

UNIT PRICES

Unit prices quoted and accepted shall apply throughout the life of the contract, except as otherwise specifically noted. Unit prices shall be applied, as appropriate, to compute the total value of changes in the base bid quantity of the work all in accordance with the contract documents.

GENERAL CONTRACT:

No. 1 (General Conditions) \$640,500.00

No. 2 (Concrete Demolition) \$191,900.00

No. 3 (Steel Sheet Pile Demolition) \$119,600.00

No. 4 (Fill Removal, Storage, & Grading) \$234,400.00

No. 5 (Steel Pipe Pile Installation) \$ 150,000. =

No. 6 (CIP Concrete Cap Construction) \$ 729,200. =

No. 7 (CIP Concrete Retaining Wall Construction) \$ 2,814,900. =

No. 8 (Steel Sheet Pile Construction) \$ 4,676,900. =

No. 9 (Soil Anchor Construction) \$ 1,135,000. =

No. 10 (Timber Boardwalk Construction) \$ 626,400. =

No. 11 (Select Fill, Geotextile, and Grading) \$ 1,650,000. =

REQUIRED FORMS

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

MBE / WBE Form(s):

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



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Professional Services Contract Award to Moffatt & Nichol for Task Order #3 for Construction Administration Services Related to the Town Common Bulkhead and Esplanade Project
<u>Explanation:</u>	<p>The existing bulkhead at the Town Common, constructed approximately 57 years ago, has reached the end of its serviceable life. This structure is a vital component of the park's infrastructure, protecting the Town Common from erosion and flooding caused by the Tar River. To address its deterioration, the City partnered with Moffatt & Nichol to develop the design and secure necessary permits for a full replacement of both the bulkhead and the esplanade.</p> <p>Task Order #3 covers construction administration services provided by Moffatt & Nichol and the broader design team. These services are essential for ensuring construction adheres to the approved plans and specifications. The team will also address issues that arise during construction, review and evaluate change order requests, monitor environmental permit compliance, and provide overall quality assurance throughout the project.</p>
<u>Fiscal Note:</u>	This project, which includes Task Order #3, is proposed to be financed using \$14,000,000 in debt service and the \$5,000,000 previously received from the State of North Carolina.
<u>Recommendation:</u>	Award Professional Services Contract of \$538,554 to Moffatt & Nichol for Task Order #3 for Construction Administration Services related to the Town Common Bulkhead and Esplanade Project.

ATTACHMENTS

- ☐ [Town Common Bulkhead PCAS Proposal](#)

April 22, 2025

City of Greenville (City)
Recreation & Parks Department
2000 Cedar Lane
Greenville, North Carolina 27858

Attn: Mr. Mark Nottingham, AICP
City Projects & Development Manager
Project Management Department

**Subject: Greenville Town Common Bulkhead & Esplanade Project
Construction Administration Services**

Dear Mr. Nottingham:

Moffatt & Nichol (M&N) is pleased to provide this proposal for construction administration services associated with the construction of the Greenville Town Common Bulkhead and Esplanade Project.

Task 1 – Program Management and Team Coordination

Objective: M&N will provide program management and coordination between representatives of the City's Parks and Recreation Department, the consultant team, and Contractor via email, telephone, virtual conferences, and on-site meetings. Effective communication and project management allow for clear dissemination of progress, productive discussions on project direction, close coordination between disciplines, early identification of opportunities, and promote timely completion of a successful project.

Scope of Work:

- Attend one (1) pre-construction meeting with representatives of the City (Recreation and Parks), Contractor, and the consultant team. It is assumed three (3) consultants consisting of the project manager, lead civil engineer, and lead landscape architect will attend the meeting.
- Attend virtual weekly construction meetings (58 total) throughout the duration of the 10 month (400-day) contract period. At a minimum, two (2) representatives from the consultant team will be present at meetings.

Deliverables:

- Meeting notes

Task 2 – Pre-Construction Surveys and IFC Drawings

Objective: A protected aquatics species survey and mussel relocation effort will be performed prior to construction. An Issued for Construction (IFC) contract document set will be prepared to incorporate comments received during the bid process.

Scope of Work:

- Conduct a protected aquatic species survey from 300 feet upstream to 1200 feet downstream of the project site. The survey will extend approximately 3 feet into the Tar River to align with project riverward translation of bulkhead. Visual surveys using bathyscope or SCUBA may be required for documentation. If federally protected mussel species are identified, they will be held for relocation.

Relocation sites will be identified based on consistency with physical and environmental conditions of the project site. These locations will be documented via GPS and provided to state and federal resource agencies. Three Oaks Engineering will conduct this survey.

- Prepare IFC contract drawings based on bid comments and Contractor comments during contract negotiations with City. The contract drawings and technical specifications will reflect changes in design and/or material.

Deliverables:

- Summary Report of Pre-construction Protected Aquatic Species Surveys/ Mussel Relocation
- IFC Contract Documents (Construction Drawing/Technical Specification)

Task 3 – Shop Drawings Reviews & RFI Responses

Objective: The consultant team will process and review all shop drawings and Requests for Additional Information (RFIs).

Scope of Work:

- Prepare submittal log in coordination with Contractor. Track submittal and identify long lead items to be addressed to avoid schedule conflicts and/or delays.
- Review and address submittals, shop drawings, and RFI's within ten (10) working days of receipt from City and/Contractor
- Evaluate water feature design prepared by Contractor and modify IFC drawings to reflect potable water supply, grading, and drainage to accommodate design.

Deliverables:

- Responses to submittal, shop drawings, and RFI responses.
- Revised IFC drawings for the water feature.

Task 4 – Field Visits

Objective: Weekly site visits will be conducted by the consultant team over a 10-month (400-day) construction period to assess if construction meets the design intent. Separate field visits will be performed at the substantial completion milestone and at project completion.

Scope of Work:

- Two (2) representatives of M&N will perform weekly site visits for 4 months (17 trips) and bi-weekly site visits for 6 months (22 trips), a total of 39 site visits.
- Two (2) representatives of The East Group (TEG) Weekly site visits will perform weekly site visits for 8 months, a total of 32 trips.
- Conduct substantial completion field visit with two (2) representatives of M&N and TEG and prepare punch list of items to be addressed by the Contractor.
- Conduct a final field visit at project completion to identify any outstanding items or project elements that need to be addressed.
- Any additional site visits or time required for construction observations and administration will be performed on a time and material basis as agreed upon by the City.

Deliverables:

- Weekly Construction Observation Reports
- Substantial Completion Punchlist
- Final Completion Report

Task 5 – Post-Construction Survey & Permit Closeout

Objective: M&N will commission a post-construction protected species survey of Neuse River Waterdogs. M&N will prepare close-out submittals and/or documentation for state, federal, and City permits. Consultant team will review and redline as-built drawings provided by the Contractor.

Scope of Work:

- Conduct post-construction Neuse River Waterdog Survey to assess level of take during construction, a special condition of the USACE permit. Neuse River Waterdog trapping efforts will be conducted no later than 12 months from completion of the project in the designated Action Area (approximately 940 meters of the Tar River). General Neuse River Waterdog sampling methods were developed in conjunction with the USFWS and the NCWRC. If Neuse River Waterdog is found, location will be marked by GPS and documentation of take will be prepared. Three Oaks Engineering will perform this effort.
- Prepare close out submittals and documentation for City, State, and Federal regulatory agencies.
- M&N and TEG review and provide redline markups of Contractor-provided as-built drawings.

Deliverables:

- Post-construction survey and permit closeout documentation.
- Redline markups of Contractor prepared As-Built (Record) drawings.

Fee Proposal

The professional services outlined in this proposal will be performed on a lump sum basis based on the following task breakdown.

Phase/Task	Fee
Design Task Order #3 – Construction Administration Services	
Task 1: Program Management and Team Coordination	\$59,003.00
Task 2: Pre-Construction Surveys and IFC Drawings	\$25,850.00
Task 3: Shop Drawing Reviews & RFI Responses	\$80,740.00
Task 4: Field Visits	\$113,834.00
Task 5: Post-Construction Survey and Permit Closeout	\$13,954.00
Construction Administration Services Subtotal	\$293,381.00
Subconsultants	
The East Group	\$175,000.00
Three Oaks Engineering	\$47,876.00
Subconsultants Subtotal	\$222,876.00
10% Markup	\$22,287.00
Subconsultants Total	\$245,163.00
Total Fee	\$538,554.00

April 22, 2025

We look forward to working with the City to successfully complete this milestone project. Should you have any questions on this proposal, please do not hesitate to call me at (919) 334-7984 or my mobile at (813) 390-3830.

Sincerely,

MOFFATT & NICHOL



Mark Pirrello, PE
Managing Principal – Coastal/Water Resources



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Professional Services Contract Award for Design, Easement Acquisition, and Construction Administration Services on the Drainage Improvements and Stream Restoration at East Firetower Road Project and Resolution Authorizing the Execution of Grant Agreement and Assurances with the North Carolina Department of Public Safety Disaster Relief and Mitigation Fund

Explanation: The Drainage Improvements and Stream Restoration at East Firetower Road Project is a flood reduction and infrastructure resiliency project. Identified in the Fork Swamp Watershed Master Plan, the project will increase culvert capacity at Fork Swamp Unnamed Tributary 3 (FSUT3, known as Fork Swamp Tributary 2 on FEMA maps) and implement targeted floodplain benching to expand hydraulic storage for reduced flood depth and frequency. The project's primary focus is implementing infrastructure improvements to enhance system performance, mitigate flooding, and improve resilience.

The City advertised a Request for Qualifications (RFQ) for design, easement acquisition, and construction administration services (CA/CO) for the Drainage Improvements and Stream Restoration at East Firetower Road Project on January 13, 2025. On February 13, 2025, staff received three (3) proposals in response to the RFQ. A selection committee consisting of three (3) Engineering Department staff reviewed and rated each proposal independently according to the criteria included in the RFQ. After independent review, the committee met together to discuss ratings and unanimously selected the team led by Kimley-Horn and Associates of Raleigh, NC.

The scope of services for the project includes, but is not limited to, planning, hydraulic modeling, environmental assessments, permitting, grant management, public involvement, surveying, cost estimating, development of construction documents, easement valuation and acquisition, and construction inspection and materials testing. These services will be provided in three task orders:

Task Order #1 (Design through Construction Award)
Task Order #2 (Acquisition Services)
Task Order #3 (Construction Administration Services)

Each task order will be negotiated at appropriate times during the life of the project as design progresses, thus allowing scopes and fees of those task orders to be developed based upon more detailed information. The lump sum fee proposal and the recommended scope of services for Task Order #1 are included

as Attachment 1.

The City has received a Notice of Award (Attachment 2) for \$1,500,000 in additional funding under the North Carolina Emergency Management (NCEM) Disaster Relief and Mitigation Fund (DRMF) to support design and construction of the Drainage Improvements and Stream Restoration at East Firetower Road project.

The City was previously awarded \$9,205,611 in FEMA Building Resilient Infrastructure and Communities (BRIC) funds from the fiscal year 2022 application cycle. In an effort to minimize the City's financial exposure, the Engineering Department identified and applied for the DRMF Grant. The \$1,500,000 award from the DRMF grant covers some of the increased construction costs and lowers the City's fiscal responsibility from \$9,496,659 to \$7,996,659 for the project. Attached (Attachment 3) for City Council consideration is a resolution authorizing the City Manager to execute a grant agreement for the DRMF funds and file all necessary assurances.

Fiscal Note:

The fee for Task Order #1 is \$1,587,385.00 and will be funded by a FEMA BRIC Grant, DRMF grant, and Stormwater utility Fund.

Recommendation:

City Council approve the fee for Task Order #1 and award a professional services contract to Kimley-Horn and Associates of Raleigh, NC, in the amount of \$1,587,385.00 for the design of the Drainage Improvements and Stream Restoration at East Firetower Road Project and approve the Resolution Authorizing the Execution of Disaster Relief Mitigation Fund Grant Agreement authorizing the City Manager to execute a grant agreement and file all necessary assurances with the NC Department of Public Safety for the project.

ATTACHMENTS

- ☐ [Attachment 1 - TO #1 Design Services for East Firetower Road Drainage Improvements.pdf](#)
- ☐ [Attachment 2 - Greenville DRMG-2324-DEQ- Notice of Award.pdf](#)
- ☐ [Attachment 3 - 2025_DRMF_Resolution_E_Firetower.pdf.docx](#)

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 Laws and Regulations.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____, _____ ("Effective Date") between

City of Greenville, NC ("Owner") and

Kimley-Horn and Associates, Inc ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Drainage Improvements and Stream Restoration at East Fire Tower Road ("Project").

Engineer's services under this Agreement are generally identified as follows:

Provides Design Services for the Project

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to

Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* ~~If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.~~

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. ~~If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.~~

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same

time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any

failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by 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. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

- C. 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 transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. ~~Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in

the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- D. ~~Owner and~~ Engineer shall ~~each deliver to the other~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall ~~contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.~~
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension:*

- 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
- a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. 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 this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to ~~invoking the procedures of Exhibit H or other provisions of this Agreement, or~~ exercising their rights under law.
- B. ~~If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.~~

6.09 *Environmental Condition of Site*

- A. ~~Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.~~
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, 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 Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~**
- B. ~~*Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and 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, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) 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, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. ~~*Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement 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.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

3. *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.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

12. *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 are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *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.
16. *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.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *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.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *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.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of

Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

25. *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.
26. *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.
27. *Site* – Lands or areas to be 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.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *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.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *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 Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *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.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. (Not included)
- E. Exhibit E, Notice of Acceptability of Work. (Not included)
- F. Exhibit F, Construction Cost Limit. (Not included)
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution. (Not Included)
- I. Exhibit I, Limitations of Liability. (Not Included)
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:
City of Greenville

By: P. J. Connelly

Title: Mayor

Date

Signed:

Engineer:
Kimley-Horn and Associates, Inc

By: Chad Beck, PE

Title: Vice President

Date

Signed:

Engineer License or Firm's Certificate No. F - 0102
State of: North Carolina

Address for giving notices:

1500 Beatty Street

Greenville, NC

27834

Designated Representative (Paragraph 8.03.A):

Mr. Ted Triantis

Title: Construction Project Manager II

Phone Number: 252-329-4810

Facsimile Number: 252-329-4535

E-Mail Address: ttruabtus@greenvillenc.gov

Address for giving notices:

Kimley-Horn and Associates, Inc.

421 Fayetteville Street, Suite 600

Raleigh, NC 27601

Designated Representative (Paragraph 8.03.A):

Travis Crissman, PE

Title: Associate

Phone Number: 984-275-3576

Facsimile Number: 919-677-2050

E-Mail Address: Travis.crissman@kimley-horn.com

APPROVED AS TO FORM:

BY: _____
Emanuel D. McGirt, City Attorney

DATE: _____

PRE-AUDIT CERTIFICATION:

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

Byron Hayes, Director of Financial Services

DATE: _____

Account Number(s): _____

Project Code (if applicable): _____

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

Project Understanding

The City of Greenville is implementing a flood reduction project along East Fire Tower Road to address flooding and infrastructure resilience. Identified in the Fork Swamp Watershed Master Plan and funded by FEMA's BRIC program, the project will increase culvert capacity at Fork Swamp Unnamed Tributary 3 (FSUT3), known as Fork Swamp Tributary 2 on FEMA maps and implement targeted floodplain benching to expand hydraulic storage for reduced flood depth and frequency. The project's primary focus is flood reduction and implementing infrastructure improvements to enhance system performance, mitigate flooding, and improve resilience. Figure 1 shows the Project Area for the work described herein. Kimley-Horn will provide the services set forth below.

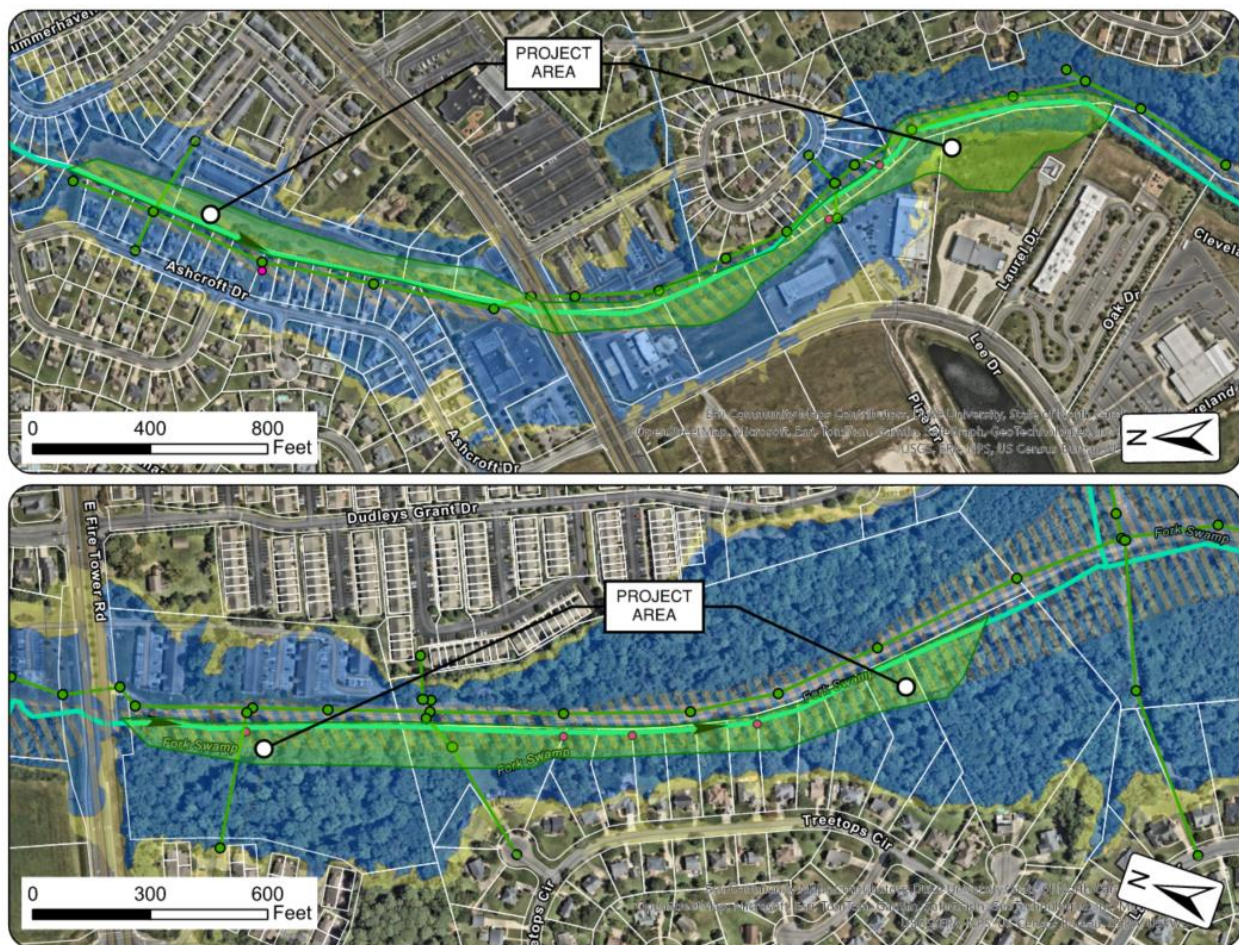


Figure 1: Project Area

Task 1. Project Management

The project management and administration efforts will consist of the following items:

- Oversee the Consultant project team to manage budget, schedule, and conformance to the project scope on a day-to-day basis
- Provide a minimum of two contacts for the City so that someone familiar with the project is available to the City if questions, comments, concerns, or other project needs arise. These points of contact will be Travis Crissman as the Project Manager (travis.crissman@kimley-horn.com / 984-275-3576) and Dan Robinson as the Project Director (dan.robinson@kimley-horn.com / +1 919-677-2178) as the Project Director.
- Perform mutual quality control with subconsultants and manage quality control processes
- Develop and implement internal project work plan
- Implement critical path tasks in a timely fashion
- Inform the City of schedule updates via the monthly project reporting
- Meet with the City's Project Team in person or via conference call as included in this Scope of Services, and be available to answer project related questions via phone and email on an ongoing basis
- Manage and direct Consultant's subconsultants in execution of project Scope
- Continual communication with major subconsultant partners to achieve consistency in methods, approaches, and deliverables.
- Prepare and submit monthly progress report to the City to update the project schedule, list milestones achieved, provide status of each major task, support and document schedule changes, and justify proposed changes to the schedule or budgets

- Maintain a project cost accounting system
- Maintain a project filing system for storage and retrieval of project documents.
- Utilize OpCenter for submittal of documents for review, commenting, and approval.

Project final deliverables shall be certified (signed, sealed, and dated) by a professional engineer and/or surveyor registered in the state of North Carolina.

Project management is anticipated to occur on an ongoing basis throughout the entire 13-month project schedule.

Task 2. Field Data Collection

2.1 Design Survey

Field design survey data will be collected by Kimley-Horn subconsultant KCI. KCI will conduct a survey of topography and infrastructure within the project site (approximately 33.7 acres, as defined by the orange boundary in the map below in Figure 2). Above-ground utility elements will be located and referenced in the survey, as will trees greater than 24" in diameter (at breast height). The KCI survey team will work with KCI subsurface utility engineering (SUE) staff to locate utilities in the project area. The survey will have the following parameters:

- Tie-to the boundary of adjacent parcels to show as a reference; This task will not be considered a boundary survey of the subject tracts;
- Horizontal control will be based on NC State Grid NAD'83 (2011);
- Vertical control will be based on NAVD'88;
- Location of site improvements including buildings, walls, curbing, walkways, signs, fences, poles, striping, drives, utility structures, walls, etc.;
- Location of dry underground utilities as may be visible and obvious from surface structures;
- Location of stormwater and sanitary sewer structures including top and invert elevations, interconnectivity of pipe and pipe sizes and types; includes next structure out;
- Next upstream public structure of storm pipes which discharge within the Project Area
- Spot shots will be collected on a 50' grid or less in order to generate 1' contours;
- Roadways will be cross-sectioned at 25' intervals;
- The stream will be cross-sectioned at 25' intervals;
- General outline of landscaped areas will be located; does not include the location of individual plants or bushes.
- Prepare a survey basemap in CAD showing contours, located improvements, Level B utility designations, SUE test holes, tied-to property lines and easement information found during course of survey.
- Completed survey will be delivered as an AutoCAD file, PNEZD point text file, and as a signed & certified hardcopy;

This Scope of Services excludes property determinations, easement development, construction staking, and as-built survey; these services may be provided upon City request.

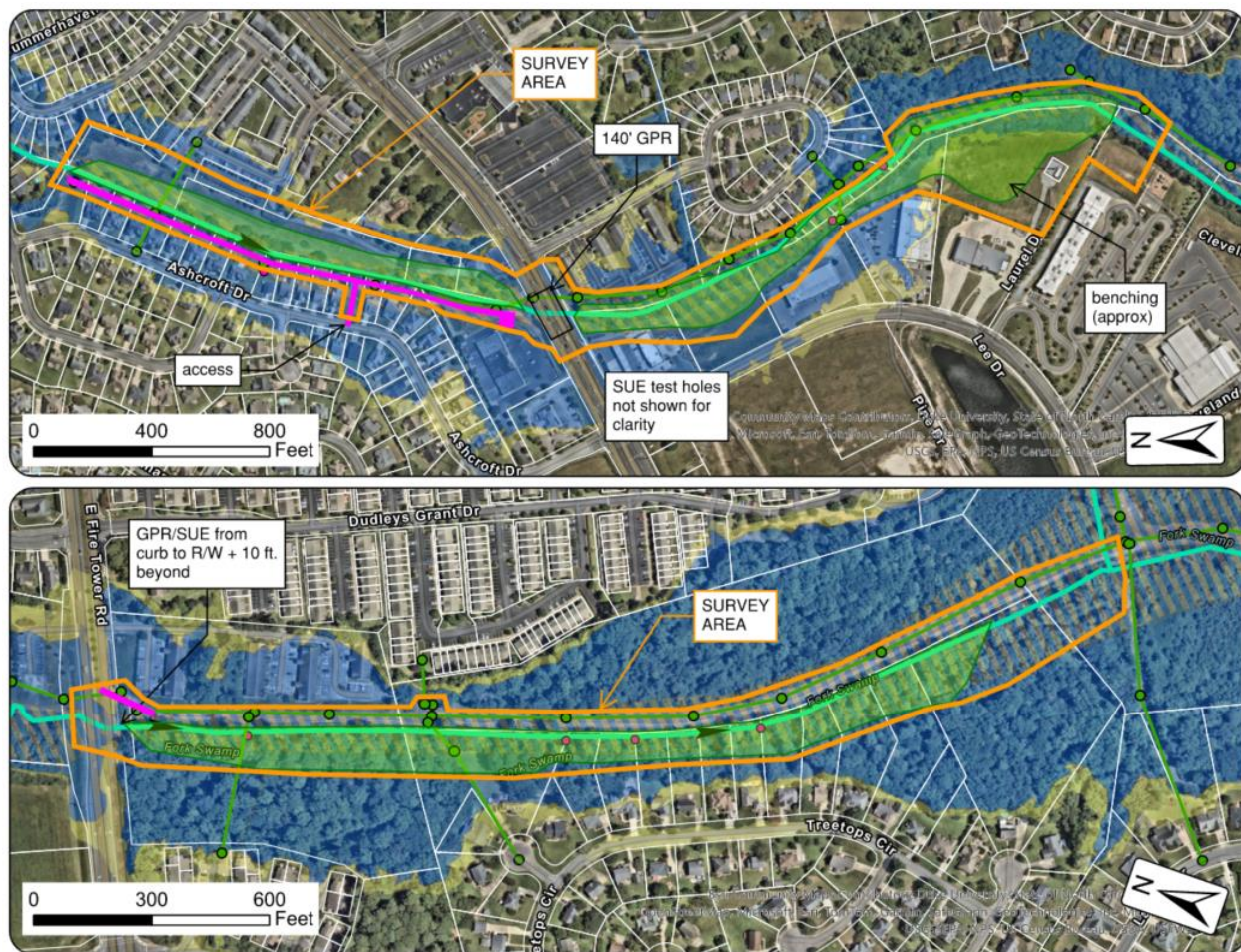


Figure 2: Survey Area

2.2 Subsurface Utility Engineering (SUE)

Subsurface utility engineering will be performed by Kimley-Horn subconsultant KCI. KCI shall obtain permits and shall provide signage and safety measures for SUE work within the right-of-way. As part of the SUE effort, the following scope of services will be performed to support the identification and mapping of existing underground utilities within the project area.

2.2.1 Designating

See Figure 2 for location areas in which designating work will be performed.

- Level B designating within the full right-of-way width for approximately 200 feet along E. Fire Tower Road at Fork Swamp Unnamed Tributary 3
- Level B designating from back of curb to right-of-way width plus 10 feet on one side for approximately 150 feet along E. Fire Tower Road at Fork Swamp
- Provide signage and safety measures for a safe work environment.
- Designate horizontal position of existing utilities using paint markings in accordance with APWA Uniform Color Code.
- Review, sign and seal final SUE files.

2.2.2 Locating

- Perform 10 Level A Test Holes. Figure 3 shows waterline test hole locations (3), indicates (2) test holes for gas, and reserves 5 additional for miscellaneous use during the project.
- Complete a Test Hole Report documenting data collected during the excavation. Include a sketch of the area with three swing ties pulled to the point set over the utility.
- Complete the restoration of the Test Hole compacting the same soil removed during the excavation in six-inch lifts and reinstating hard surface removed with the original material removed with 10" Core Drill sealing Core Plug with Utilibond.

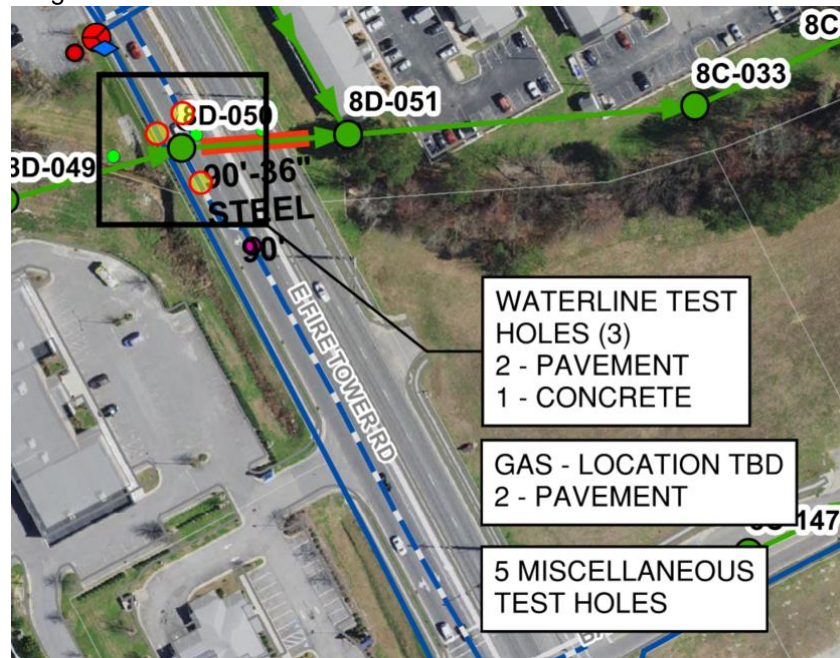


Figure 3: Test Hole Locations

2.2.3 Deliverables

- MicroStation CADD .dgn or .dwg files of SUE locates
- PDF of signed sealed utility plots
- Signed sealed Test Hole Reports

2.3 Geotechnical Investigations

Geotechnical investigations will be performed by Kimley-Horn subconsultant Falcon Engineering. Falcon proposes to conduct a geotechnical subsurface investigation consisting of eight soil borings along the project corridor to assess subsurface conditions for the planned improvements. Borings will be located along FSUT3 near the existing culvert and in upstream and downstream benching areas; borings will also be obtained in the Fork Swamp floodplain benching area. Fork Swamp borings will be obtained by hand auger rather than drill rig to avoid excessive clearing to gain access. Figure 4 shows proposed boring locations. Field work includes light clearing for access, GPS-based boring location, and drilling in floodplain areas up to 20 feet in depth and adjacent to culverts up to 30 feet in depth. Soil samples will be collected for laboratory testing to support engineering evaluations. Groundwater observations will be collected during drilling. Laboratory testing of soil samples (moisture content, Atterberg limits, grain size, Proctor, and organic content)

Falcon Engineering will prepare a geotechnical report summarizing field and lab results, subsurface conditions, and engineering recommendations for culvert foundation design, slope stability, excavation, and construction considerations.

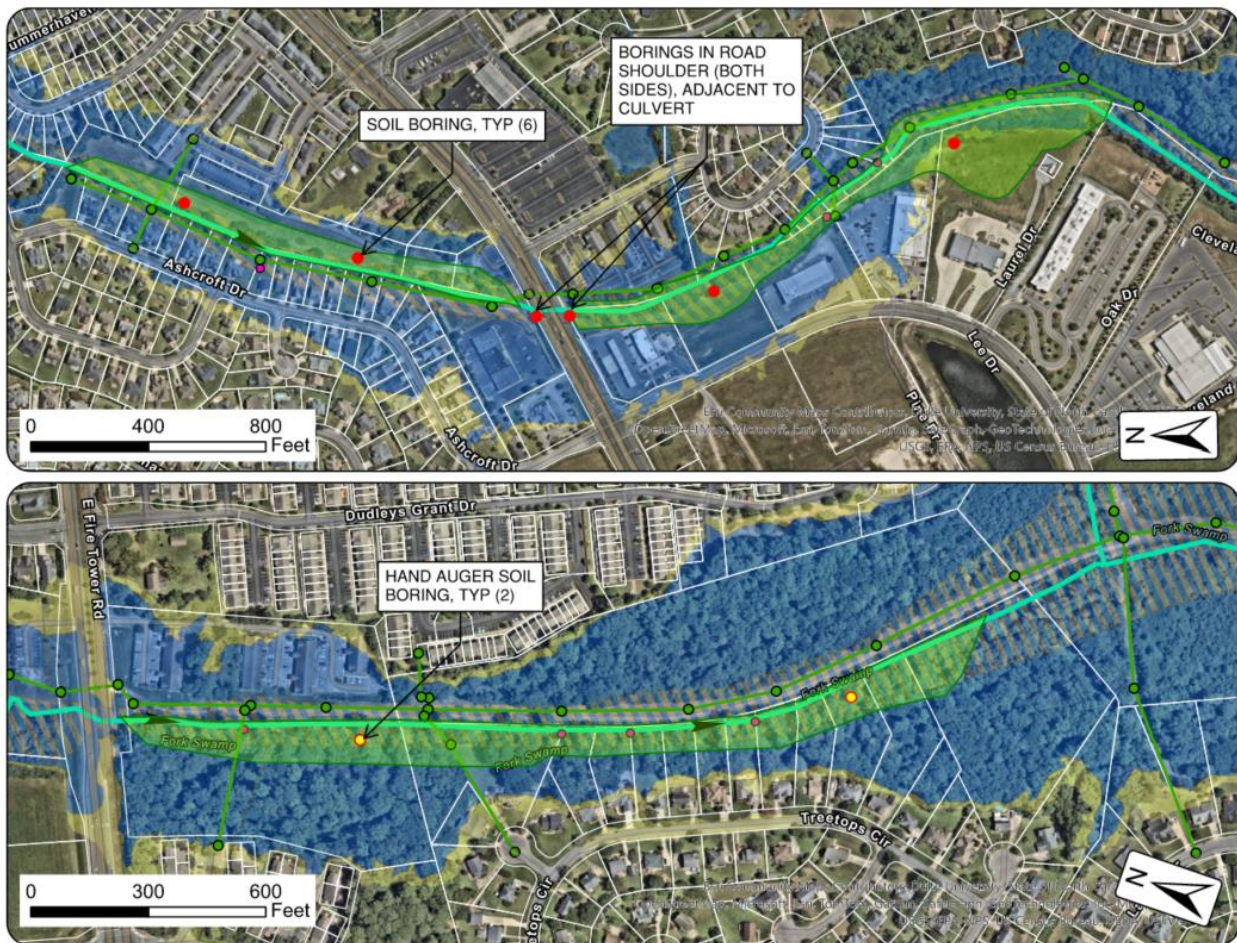


Figure 4: Soil Boring Locations

2.4 Geomorphic Assessment

Fork Swamp and FSUT3 are streams which have been straightened and channelized over the years as development has occurred around them. Undercutting and sloughing are occurring at some locations along both streams. This Scope of Services includes channel and bank stabilization along Fork Swamp and FSUT3 to allow for creation of floodplain benches that will lower hydraulic gradelines within the Project Area to the extent feasible in order to reduce floodprone areas and alleviate structural flooding in the watershed.

The design for selecting bank stabilization locations will begin with identifying high-risk erosion areas based on geomorphic assessments and hydraulic modeling. The following natural channel design assessment and measurements will be performed (Rosgen Level II and III).

- Representative riffle and pool cross-sections, establishing bankfull elevation. Two riffle and two pool cross-sections per stream reach, Fork Swamp and FSUT3.
- Measurements of channel geometry along the longitudinal profile (sinuosity, meander length, radius of curvature, amplitude, and belt width).

- Representative bed substrate analysis within the reach.
- Bank Erosion Hazard Index (BEHI) for the reach.
- Near Bank Stress based solely on visual indicators (NBS) for the reach.

A survey instrument will be used to collect the limited channel assessment data listed above, but this data will not be collected to a level sufficient to provide base mapping for design. The morphological survey will only be of the detail sufficient for a geomorphic assessment and will be supplemented with the detailed field survey performed for the project area.

The geomorphic assessment will be used to determine areas of high-risk erosion rates that will need bank stabilization measures installed for long-term stability. It is anticipated that up to 10,000 bank feet of bank stabilization will be designed. Channel longitudinal profile adjustments are excluded from this Scope of Services, however, in-stream structures may be installed in the channel to promote long-term bank stability.

Task 3. Hydrologic and Hydraulic Modeling

To the extent possible, models and data which were developed during previous efforts will be utilized for this Task.

The Project Area shown includes approximately 6,600 feet of Fork Swamp and Fork Swamp Unnamed Tributary 3 which will be modeled and analyzed as described below. The FSUT3 model will be terminated at the downstream end of Wimbledon Drive. The Fork Swamp model will be terminated at the downstream end of Evans Street. The models will be used to analyze and design improvements as well as to assess downstream impacts. If, at the downstream terminus of the models, no increase in flow or water surface is computed by the models, it will be assumed that there are no adverse downstream impacts.

3.1 Hydrologic Modeling

The project will utilize the existing HEC-HMS model developed under the Fork Swamp Watershed Master Plan (WSMP). The Kimley-Horn team will review the existing HMS model configuration, hydrologic parameters, and previous validation data. The model will be updated to incorporate major relevant changes since the original model development, such as land use updates.

The team will evaluate and compare peak flows from multiple sources, including the WSMP, USGS StreamStats, and FEMA-effective models. Historical event data (anecdotal and/or gage-based measurements) will be reviewed to validate the selected flow computation methodologies. Kimley-Horn will collaborate with City flow comparison results, resulting in an informed selection process tailored specifically to project requirements. Due to the proposed unsteady modeling approach proposed in this Scope of Services, the likely path forward will be to use the HMS flows from the WSMP.

If deemed necessary Kimley-Horn may divide the subbasins in the project area into additional more detailed subbasins to capture localized variations in runoff timing. Using HEC-HMS, full runoff hydrographs for the SCS Type III design storm events will be computed for each subbasin. The updated HMS runoff hydrographs will serve as direct input into an unsteady HEC-RAS hydraulic model. The hydraulic model will incorporate geometric changes, including proposed floodplain benching and culvert improvements at E. Fire Tower Road, and will explicitly account for dynamic storage and attenuation effects resulting from these improvements.

3.2 Hydraulic Modeling

For this project, the Consultant will develop an unsteady-state two-dimensional (2D) hydraulic model using HEC-RAS for Fork Swamp and Fork Swamp Unnamed Tributary 3. The purpose of this model is twofold: firstly, to evaluate potential flood reduction alternatives involving floodplain benching and increased culvert dimensions, and secondly, to assess and manage potential downstream hydraulic impacts resulting from proposed improvements.

The HEC-RAS 2D model will be constructed for both existing and proposed conditions using high-resolution LiDAR based terrain data and topographic survey information, which will be processed to generate a computational mesh representing existing channel geometry, floodplain features, hydraulic structures, buildings, and proposed improvements. Flow inputs into the 2D domain will be established through DSS file integration with outputs from the HEC-HMS hydrologic model discussed above. These HMS hydrographs will serve as boundary conditions for the hydrologic scenarios under evaluation, ensuring seamless hydrologic and hydraulic coupling. Hydraulic analysis will be conducted for the 1-, 2-, 10-, 25-, 50-, and 100-year events.

The model will undergo validation based on available anecdotal accounts, previous historical modeling, and validation data obtained from prior watershed master plans. Based on these factors, limited model adjustments may be made if applicable. An unsteady flow simulation will be completed to establish baseline existing conditions, providing a benchmark against which proposed improvement scenarios will be compared. Proposed scenarios will include up to three (3) variations in culvert sizing and floodplain bench configurations, with analysis of resulting hydraulic conditions such as flood elevations, velocities, inundation extents, and hydrograph attenuation.

Downstream impacts will be evaluated through direct comparison of pre- and post-project hydraulic conditions at the model terminus. If pre-project water surface and flow values are met in the post-project model, it will be assumed that there are no negative downstream impacts. Comparative analyses will focus on peak flow rates, velocities, inundation extents, and overall hydraulic behavior at critical locations downstream of the study area. Model results, including visualizations, maps, and tabular summaries of hydraulic performance under various scenarios, will be comprehensively documented to facilitate informed decision-making and regulatory review.

3.3 Modeling Deliverable

Kimley-Horn will document modeling efforts, assumptions, methodology selections, results, and recommended improvements in a technical basis of design report. The report will illustrate hydrologic and hydraulic performance for existing conditions, proposed improvements, and downstream impacts. GIS mapping of model outputs and flood extents within the project area will be included to support clarity and stakeholder understanding.

3.4 NCDOT Hydraulics Review Package

The proposed improvements will replace the existing dual arch corrugated metal pipe, Pipe 484 on NCDOT Pitt County bridge location map. The replacement will involve coordination and approval from NCDOT Hydraulics Unit prior to Encroachment Agreement approval. Following approval from the City on 65% Plans, Kimley-Horn will prepare the following hydraulic calculation package to be approved by NCDOT Hydraulics:

- Field reconnaissance photos of existing drainage features and patterns, noting existing condition, to be retained

- Hydraulic designs calculations for roadside ditches, inlet computations, and storm drainage computations. The portion of the project that contain curb and gutter will be evaluated for spread conditions along the proposed median as well as the existing outside curblines.
- Pre and Post Analysis will not be performed as no additional impervious is anticipated to be added within NCDOT right-of-way.
- Culvert Survey Report (CSR) for FSUT3, including model narrative explaining revisions to FEMA HEC-RAS model downloaded from FEMA.
- Construction Drawings that include proposed drainage features (storm drain systems, inlets, ditches, cross pipes, etc.) and associated drainage labels.

Task 4. Utility Coordination and Design

The Consultant will provide utility coordination services for public and private utilities within the E. Fire Tower Road project corridor, including those impacted by the culvert replacement and the floodplain benching improvements. This scope includes identifying utility owners, collecting existing utility mapping and records, and performing conflict analysis based on preliminary and final design plans. It is assumed that a maximum of 7 utility owners will be involved in this task. Coordination will involve regular communication with utility owners to confirm existing locations, assess potential conflicts, and determine necessary adjustments or relocations. The consultant will facilitate coordination meetings and document correspondence and decisions.

4.1 Utility Coordination Schedule

The following bullets describe the frequency of utility coordination; this Scope of Services assumes that all utility owners can join the meetings as a group for discussion of potential conflicts and relocations.

Coordination Schedule:

- Project notification – notify the City’s standard list of utility owners of the upcoming project and work to schedule future review and coordination meetings
- Preliminary design review meeting – following 30% plan submittal and City / GUC review
- Utility conflicts field meeting – following 65% plan submittal and City / GUC review
- Final design coordination – following 90% plan submittal and City / GUC review

4.2 Greenville Utilities Commission (GUC) Utility Design

The scope of utility coordination with Greenville Utilities Commission (GUC) will be focused on the replacement of the existing culvert crossing at E. Fire Tower Road as part of the proposed floodplain benching and drainage improvement project. Coordination efforts will include identification and evaluation of GUC-owned utility facilities within the culvert replacement limits and determination of potential utility conflicts. This Scope of Services assumes that utility relocations will only be required in association with the culvert replacement. No utility relocations are anticipated along the open stream channel or in areas impacted by floodplain benching. Early and consistent communication will be prioritized to keep GUC informed of project design progress, provide timely data for utility assessment, and allow for integration of required adjustments in the roadway and culvert design.

4.3 Utilities by Others Plans

65% design drawings will be provided to private utilities for the purpose of review and coordination. Drawings will show preliminary private utility relocations and permanent utility easements (PUE), if required. The Consultant will work with pole owners and other utilities to identify additional PUE needs.

Utility coordination meetings described in Task 4.1 will review potential conflicts and establish the basis for a conflict matrix. Consultant shall provide a draft conflict matrix to the City and private utility owners.

The Engineer will coordinate the resolution of utility conflicts with the respective owners. The design and adjustment of privately-owned utilities will be the responsibility of the respective owners, with coordination provided by the Engineer.

The Engineer will illustrate the private utility design and adjustments of utility items on Utility by Others (UBO) plans. The Engineer will assist the City with preparing supporting illustrations needed to contract or coordinate with private utility owners to facilitate relocation of their assets.

Task 5. Grant Management

Grant management support services will be performed by Kimley-Horn subconsultant ICF. Grant management support services will review for general programmatic compliance with the awarded FEMA Building Resilient Infrastructure and Communities (BRIC) grant for the City of Greenville- Drainage Improvements and Stream Restoration at East Firetower Road project number EMA-2022-BR-001-0018, as well as the Emergency Management Disaster Relief and Mitigation Grant (DRMG) MOA #NCEM-DRMG2324. The grant management approach consists of four primary workstreams including overseeing scope, schedule, and budget; advising on project compliance; leading monitoring and reporting for the grants, and supporting successful grant closeout.

5.1 Oversee Scope, Schedule, and Budget

Consultant will monitor minimum scope requirements, period of performance, and draft and submit subrecipient agreement modifications. The grant management staff will participate in and support leading regular meetings, periodic site visits, and interim deliverable reviews to maintain a comprehensive perspective of progress from a grant and technical delivery perspective.

Monitor Scope Requirements. The Consultant shall review the Grant Agreement at the outset of the project to compile a list of deliverables and minimum grant requirements necessary for successful reimbursement and closeout. The Consultant and City project team will work together to align the project schedule with creation of deliverables for regular reimbursement of costs, if possible assuming a 13 month schedule for this Task Order. This schedule and minimum grant requirements will be monitored through regular meetings throughout the life cycle of the project.

Monitor Period of Performance. The Consultant shall monitor the project in accordance with the period of performance and deadlines set forth in the Grant Agreement. The original project schedule set forth in the application will be used to determine if sufficient progress is being made to complete Phase 1 deliverables by the set deadlines. This schedule and progress will be reported to the North Carolina Department of Public Safety (NCDPS) in monthly and quarterly reports.

Subrecipient Agreement Modifications. If adjustments to the Grant Agreement scope, schedule, and budget become necessary, Consultant will communicate the need to the City of Greenville, develop a written modification request with supporting documentation, and present the request to NCDPS for review and approval. The approach for regular project meetings and progress reporting helps us track milestones for the project and understand at the earliest opportunity if a modification may be needed. This Scope of Services includes two (2) such modification requests to NCDPS.

5.2 Advise on Project Compliance

The Fire Tower Road project is following a FEMA Phased Project approach, meaning that NCDPS and FEMA will complete another compliance review of completed design and permit documents at the end of Phase 1. Consultant will develop project documents in accordance with FEMA compliance requirements in Phase 1: confirming cost-effectiveness, supporting obtaining acquisition documentation, and following environmental and historic preservation policy. Phase 2 compliance will be scoped in a future task order.

Benefit-Cost Analysis. Consultant will support the City of Greenville with maintaining the project benefit-cost analysis submitted with the FEMA application to confirm the project remains cost-effective through design and construction. This will include interim reviews at design and construction milestones and as budget modifications for Phase 1 are necessary. Consultant will keep the project team apprised of the benefit-cost ratio in order to inform necessary changes to the project to remain cost-effective. The updated analyses will be submitted with Phase 1 project closeout deliverables.

Acquisition Documentation. The Fire Tower Road project will require easement acquisition to construct the project. Consultant will support the City of Greenville in following FEMA land acquisition policy and requirements in accordance with FEMA HMA Guidance, Part 12.B.1 as follows: Consultant will supply the project team with grant compliance templates for the required acquisition documentation, including Notice of Voluntary Interest and Declaration and Release forms. Consultant will also provide a checklist and support maintenance of property documentation, including appraisals, purchase offers, acceptance, and closing documentation. This documentation will be maintained as part of the project record.

Environmental and Historic Preservation Policy. HMA programs and grants must comply with Environmental and Historic Preservation (EHP) laws/regulations and with 44 C.F.R. Part 10, and compliance with these laws/regulations is a condition of the grant award. FEMA has the responsibility to ensure compliance with these laws/regulations and necessitates the early consideration of EHP considerations. Consultant will support the project team to apply understanding of laws, regulations, and policies such that EHP regulations as they are spelled out in the Grant Agreement are met.

Grant Specific Coordination Meetings. Coordinate and lead meetings specific to Grant Compliance above and beyond monthly scheduled progress meetings.

5.3 Lead Monitoring and Reporting

Monitoring, reporting, and records retention approaches must meet state and federal records retention requirements. Consultant will create project file checklists and regular file reviews such that appropriate documentation is obtained to demonstrate programmatic and financial compliance. Gaps identified through these reviews will be elevated to the project team and discussed immediately. Consultant will maintain project records, develop and submit monthly and quarterly reports required by NCDPS, and collaborate with the City of Greenville to track project financials and draft requests for reimbursement for City review.

Record-Keeping. Consultant will use the City of Greenville's OpCenter platform to maintain project files in accordance with applicable government regulations. Project documentation, including contracts, payment requests, invoices, cleared checks, quarterly reports, site inspections, and requests for reimbursement will be stored and readily available to the City of Greenville for review. Consultant will monitor the project files throughout the program for completeness and compliance with programmatic requirements.

Monthly and Quarterly Reporting. Consultant will maintain records of work, schedule, and expenditures and submitting regular progress and other information in the form of monthly and quarterly reports. Monthly reports are submitted following each month's end and document progress, issues and resolutions, contract modifications, requests for reimbursement, and other project status items as described in previous sections. Quarterly reports are submitted following each quarter's end and document progress as well.

Financial Reporting. Consultant will use financial management tools and best practices developed to implement HMA projects to assist the City of Greenville in financial reporting of grant-related activities. Consultant will work with Greenville finance staff to draft and submit quarterly reimbursement requests.

5.4 Grant Closeout

Grant closeout will be required for Phase 1 of the Fire Tower Road project. At the close of Phase 1, Consultant will assemble required closeout deliverables and grant documentation and submit to NCDPS for review. This will include drafting the official closeout letter or completing a closeout form, coordinating the final inspection with NCDPS, and submitting the final Request for Reimbursement.

Final Inspection. If required for Phase 1, Consultant will coordinate the final site walk with NCDPS before Phase 1 closeout. The site walk will present the proposed project location to NCDPS.

Final Request for Reimbursement. Consultant will submit the Phase 1 Final Request for Reimbursement. The Final Request for Reimbursement includes a form that shows the overall amount of the request and a summary of documentation, which provides a breakdown of invoices the applicant would like to be reimbursed. Any unused project funding in Phase 1 will be requested for transfer to the Phase 2 budget.

Programmatic Audit Assistance. Consultant will assist the City of Greenville with programmatic audit finding resolutions, should they arise during the contract period. This is accomplished by involvement in the review of audit findings with applicable auditors. In addition, Consultant will be available to provide feedback on corrective action plan development. Once a corrective action plan is finalized, Consultant will follow up on corrective action plan elements and timelines such that audits are resolved in a timely fashion.

Task 6. Construction Documents

Final design documents will consist of construction drawings and specifications suitable for use by construction contractors to develop construction bids. As construction drawings are developed, digital PDF review sets will be delivered to the City of Greenville via OpCenter at the following percent complete milestones: 30%, 65%, and 90%. The final review milestone proposed is at 90%, after which City comments will be addressed and 100% complete construction drawings will be provided to the City for use in bidding the project. Following City review at each milestone, a milestone review meeting will be scheduled to review comments and clarify revisions. Responses to comments will be document and submitted to the City for approval while Construction Documents are advanced to the next milestone, incorporating actions from comment responses.

NCDOT Standard Specifications and Provisions will be used where applicable and will serve as the overall technical specifications. Kimley-Horn will provide technical Project Special Provisions (PSP) for design items not included within the NCDOT standard specifications (up to 15 PSPs).

Construction detail drawings will be based on City of Greenville, GUC, and NCDOT standard detail drawings. Kimley-Horn will provide customized details subject to the limitations discussed within this Scope of Services.

6.1 Structural Design

Based on field survey and the CSR, and geotechnical data for the site, Consultant will provide structural design for the culvert and wingwalls. Culvert construction on East Fire Tower Road will be staged to maintain traffic flow during construction. In order for both traffic and hydraulic flow to be preserved, the dual reinforced concrete box culvert will be designed and detailed in four (4) stages. This staged design will require multiple sets of construction details and reinforcing design.

The Consultant shall prepare construction documents and specifications for the RCBC in accordance with AASHTO and NCDOT standards. These documents will include detailed plans for the culvert barrels, wingwalls (4), and scour or cutoff walls. Headwall is assumed to be NCDOT standard 1' high using standard NCDOT details. The culvert will be designed for the most conservative loading condition anticipated based on the geotechnical report and proposed undercutting design. Instead, the length of each wingwall will be calculated to match the proposed roadway sideslopes within the project area.

This Scope of Services includes structural design and detailing of up to one (1) custom drainage structure capable of supporting vehicular traffic. Other custom drainage structures will be precast, with design provided by Contractor.

6.2 Traffic Control Design and Assumptions

To maintain traffic flow during the culvert replacement on E. Fire Tower Road, the project will be designed to accommodate phased construction while keeping the roadway open to the extent possible. The traffic control design will include multiple temporary traffic configurations, requiring lane shifts, re-striping, and signal modifications to safely direct vehicles through the work zone during each phase of construction.

Key elements of the traffic control design include:

- Development of a phased traffic control plan that supports staged culvert construction while maintaining at least one lane of traffic in each direction.
- Temporary reconfiguration and striping of lanes along E. Fire Tower Road to accommodate shifting traffic patterns.
- Design of temporary signal modifications at the intersection of Ashcroft Drive and E. Fire Tower Road to align with each construction phase for traffic control (see Task 6.3 for more detail).
- Coordination with Winterville Charter Academy and Bayswater Road Greenville Fire/Rescue to account for access and circulation during construction (as described in Task 7.5).
- Traffic Control Plans will be developed based on NCDOT E. Fire Tower Road design plans, existing photogrammetry, or a combination of the two, depending on availability and applicability.

6.3 Traffic Signal Design

To maintain traffic signal operations during temporary traffic control phasing associated with a culvert installation, the project will require temporary signal modifications at the intersection of SR 1708 (Fire Tower Road) and Bayswater Road/Ashcroft Drive. Consultant understands that up to four temporary signal plans will be needed to address temporary traffic control phasing. This Scope of Services assumes that the traffic signal modifications will also include flashing yellow arrow signal head upgrades to bring the signal up to current NCDOT standards.

Consultant will coordinate with the City of Greenville and NCDOT to gather existing information needed for the signal designs at the subject intersection. Consultant will visit the site to confirm the existing conditions. Based on the survey and traffic control plans generated for this project, Consultant will prepare up to four temporary signal upgrade plans at the subject intersection.

Based on a review of the existing signal conditions during scoping, there is a possibility that a structural analysis will need to be performed on the metal signal poles at this intersection to determine whether they have enough loading capacity to support the flashing yellow arrow signal heads needed to bring the signal up to current NCDOT standards. Consultant will coordinate with NCDOT regarding the loading capacity of the existing metal poles and will request existing information they have on the pole loading capacities, and if a structural analysis is required, Consultant can perform that work as an additional service.

Based on a review of the existing signal conditions during scoping, Consultant does not anticipate impacts to existing signal poles; however, should those impacts arise, additional temporary design(s) may be needed to install new pole(s) and maintain the operation of the signal during construction. Consultant can prepare those temporary signal design(s) as an additional service if needed. Similarly, Consultant does not anticipate impacts to the existing fiber optic cables which communicate between traffic signals; however, should those impacts arise, communication plans may be needed to provide new connections. Consultant can prepare those communication plans as an additional service if needed.

Consultant will develop preliminary signal designs and electrical details in conformance to City of Greenville and NCDOT standards for the subject intersection. Consultant will prepare and submit the preliminary plans to the City of Greenville and NCDOT for review within the milestone schedule described in Task 6. Upon receipt of comments, Consultant will revise the plans if necessary in accordance with project milestone submittal/approval schedule.

6.4 Deliverables for 30% Complete Milestone

- Drawings consisting of:
 - Cover (1)
 - Abbreviations and Symbols
 - General Notes
 - Existing Conditions/Demolition Plan
 - Improvements Plan Views
 - Preliminary Utility Conflict Plan Views
- Preliminary Opinion of Probable Construction Cost (OPCC) including quantities, unit prices, and contingency utilizing North Carolina Department of Transportation (NCDOT) Pay Items
- Draft basis of design memorandum (including hydrologic and hydraulic assumptions/modeling, design assumptions, impacted properties)

6.5 Deliverables for 65% Complete Milestone

- Drawings consisting of:
 - Sheets as described in Task 6.3.
 - Improvement Plan and Profil
 - Traffic Control Plan(s)
 - Erosion Control Plan(s)
 - Planting Plan(s)
 - Planting Details
 - Standard Details

- Detail sheets based on City of Greenville, GUC, and NCDOT Standard Details where applicable
- Updated basis of design memorandum (including hydrologic and hydraulic assumptions/modeling, design assumptions, impacted properties)
- Draft Project Special Provisions
- Updated OPCC
- List of required permits; permit application process to begin following milestone review by City of Greenville (application packages available for City staff review prior to sending by request) and GUC.
- Utility by Others Plans – to be used in coordination with utility companies

6.6 Deliverables for 90% Complete Milestone

- Drawings consisting of :
 - Sheets as described in Task 6.5.
 - Structural Design
 - Custom Details
- Updated basis of design memorandum (including hydrologic and hydraulic assumptions/modeling, design assumptions, impacted properties)
- Project Special Provisions
- Updated OPCC
- Permit status update

6.7 Deliverables for 100% Complete Milestone (Bid Set)

- Fully developed drawings, including plan, profile, and detail drawings
- Final basis of design memorandum (including hydrologic and hydraulic assumptions/modeling, design assumptions, impacted properties)
- Final Project Special Provisions and bid form
- Final OPCC
- Permit status update

Task 7. Public Engagement and Property Owner Communication

7.1 Property Owner Coordination

Over the course of the community outreach tasks, the Consultant will be working to identify and make contact with the impacted landowners surrounding the project in order to help facilitate the process of easement acquisition. Upon completion of the 65% milestone, the team will begin contacting impacted landowners to communicate with them individually regarding project technical details and process of acquiring permanent drainage easements on their property. Communication with landowners will be documented with notes provided to the City.

This Task is limited to initial contact with land owners, landowner education, and communication of the easement needs to landowners. Valuations or formal offers of compensation are excluded.

7.2 Public Meetings

During the 30% completion milestone, Consultant will aid the City with conducting an in-person community meeting. The purposes of this meeting will be to introduce the project to surrounding residents and impacted landowners, to provide an understanding of the design approach and the typical grading and structural measures that are likely to be implemented to reduce flood frequency and duration, and to show examples of such measures from other similar projects. The meeting will also

provide an opportunity to introduce the concept of City acquired permanent drainage easements for landowners adjacent to the Project.

Following the 90% completion milestone, the team will aid the City with conducting a second in-person community meeting. The purpose of this meeting will be to present specific details of the project design to surrounding residents and impacted landowners. The meeting will also offer the opportunity to begin discussing the impacts the community may experience during construction.

The City allows for a two-week public comment period after a public meeting. Comments and questions will be directed to the team, who will catalog and respond to them accordingly with City approval.

Other key provisions applying to both public meeting includes:

- The City will act as the host for the meeting, and in doing so will determine and provide the meeting location, as well as promotion of the meeting for attendance.
- The team will provide site maps and drawings developed from project construction drawings, basis of design report, or project model outputs. Depending on meeting format, Consultant will develop and deliver the PowerPoint presentation if necessary to communicate the project to attendees.
- Consultant will record the meeting and provide the recording to be posted on the Project Website.

7.3 Web Content

During the 30% completion milestone, Consultant will work with the City to develop and host a project website. The project website will be hosted on the City's web platform, and the Consultant will provide the technical content. Content is expected to include brief project narrative, annotated/captioned photographs, model output graphics, additional brief narrative with summary table showing project benefits, or deliverables being produced as part of another task. The website will be maintained throughout the project life cycle, with content updates occurring at important project junctures through the design and construction phases. The website will be a primary means to keep residents and landowners updated regarding project progress and details.

7.4 Public Meeting Notification

Consultant shall develop informational door hangers for adjacent and impacted property owners as well as yard signs to notify the public in advance of public meetings. Consultant staff shall place door hangers at impacted properties and shall strategically place yard signs (in collaboration with City staff) to notify the public of upcoming meetings.

7.5 Winterville Charter Academy and Bayswater Road Greenville Fire and Rescue Coordination

During this design phase, Consultant will coordinate as described in this section with Winterville Charter Academy and Greenville Fire/Rescue at project milestones to gather input on construction phasing and emergency access needs. Initial contact will be made via a meeting prior to the 30% design submittal to inform them of the project scope and schedule and to request operational or access concerns they would like considered. Following the 65% submittal, Consultant will conduct a meeting to present the proposed construction phasing and temporary traffic control approach for their review and comment, specifically focusing on emergency access routes and potential response time impacts. Feedback received will be incorporated into the 90% design submittal if approved by the City, which will be shared with Winterville Charter and Fire/Rescue for a final review of the phasing and access provisions. At the 100% design milestone, Consultant will confirm with the City that input has been addressed and

provide a finalized traffic control plan for Winterville Charter and Fire/Rescue records. Coordination will be documented, and a record of communication will be included in the final design deliverables. It is assumed that combined meetings will be held, including both organizations.

Task 8. Permitting

8.1 Environmental Permitting

Concurrent with development of construction documents, Consultant will conduct the supporting assessments and investigations to support permit applications and National Environmental Policy Act (NEPA) documentation as described in Task 8.5. Such assessments and investigation will include:

- Stream/Wetland Delineation and description of Jurisdictional Wetlands within the project site.
- Biological Assessment to determine the presence, status, and distribution of threatened or endangered species within the site.
- Cultural/Archeological Assessment to determine the presence, status, and distribution of significant cultural or historical resources or artifacts within the site.

The team will engage representatives of the pertinent regulatory agencies to identify their expectations for key elements and the level of detail necessary for permit submit packages and to identify potential “red flag” issues that may delay or confound the permitting process.

Upon completion of the 65% complete milestone, preparation of the applications for required permits will begin. Permitting packages will be provided to City for review prior to submittal to the appropriate permitting agencies. Consultant will submit the project for approval by USACE (Clean Water Act Section 404 Permit) and NCDEQ (401 Water Quality Certification and Buffer Authorization. This Scope of Services assumes that this project will qualify for coverage under a Nationwide permit.

8.2 Erosion and Sediment Control Permitting

This scope includes preparation and submittal of an erosion and sediment control plan to the North Carolina Department of Environmental Quality, Division of Energy, Mineral, and Land Resources (NCDEMLR) for review and approval, as the project will disturb more than one acre. The plan will be developed in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual. Consultant will utilize the Express Permitting Program to expedite the review process. This includes scheduling a pre-submittal meeting with the appropriate regional office, preparing the application package with required forms, fees, and supporting documentation, and submitting the plan for express review. Comments received from NCDEMLR staff will be addressed to obtain plan approval. After approval by NCDEMLR, Consultant will complete eNOI for coverage under the NC General Permit.

Current anticipated fees (subject to change) are \$2,000 (Express) + \$100 per acre disturbed. Up to 25 acres of disturbance is included to compute the anticipated fee of \$4,500 (included in project expenses).

8.3 FEMA Permitting (CLOMR)

Kimley-Horn will provide a pre-construction CLOMR and a post construction LOMR for the project as described below. It is anticipated that the CLOMR will consist of a single model and submittal package to NC Department of Public Safety (NCDPS) inclusive of both stream reaches.

8.3.1 Duplicate Effective (DE) Model

The Duplicate Effective (DE) plan will be created using the effective HEC-RAS data. This DE model will be checked for matching the effective data presented in the Flood Insurance Study (FIS) document.

8.3.2 Corrected Effective (CE) Model

The Corrected Effective (CE) plan will be generated by copying the DE plan and updating the geometry using survey topography collected for the project; survey data obtained during the Fork Swamp watershed master plan, and applicable LiDAR data. Cross sections will be updated, and conveyance obstructions will be added where needed. Additional cross sections may be inserted or existing ones removed to more accurately represent existing conditions and to create a solid basis for comparison with the proposed conditions model.

8.3.3 Proposed Conditions (PC) Model

The Proposed Conditions (PC) model will be developed by copying the CE plan and incorporating updates to reflect the proposed culvert and stream grading. The model will simulate the impact of the proposed improvements on the floodway and floodplain to determine impacts to floodplain/floodway.

8.3.4 CLOMR Reporting and Documentation

Kimley-Horn will prepare a CLOMR for the proposed project. The changes in BFE resulting from the proposed stream and floodplain regrading will require a remapping of the floodplain and floodway limits through cross sections within or in close proximity to the project area.

The CLOMR process will include the following steps:

- Prepare a CLOMR application package that includes the following elements:
 - Project Narrative
 - Model Comparison Tables
 - Certified Topographic Work Map
 - Annotated FIRM
 - Design Plans
 - NFIP Part 65.12 Evaluation of Alternatives
 - Insurable structure no-impact certification
 - Impacted property owner notification letters
 - Revised flood profiles
 - Revised floodway data table
 - Applicable MT-2 forms
 - Supporting FIS data
 - Hydraulic modeling and GIS files associated with the analysis
- It is assumed that the City of Greenville will review the CLOMR and is the only entity required to sign the MT-2 form.
- Digitally submit to FEMA through the online Letter of Map Change (LOMC)

The FEMA CLOMR application fee is \$6,500, which is subject to change and is included in project expenses. FEMA will have 90 days to review the initial submittal. FEMA will also have 90 days to review comment responses prepared by the Consultant. It is not unusual for several review/comment cycles to occur within one CLOMR review process.

8.4 NCDOT Encroachment Agreement

Following the 65% submittal to the City and City review of the 65% submittal, Consultant shall submit to NCDOT for an encroachment agreement for the work proposed within E. Fire Tower Road. Consultant shall work with NCDOT to obtain approval of the encroachment agreement. This project is expected to require a 2-party and a 3-party encroachment agreement; GUC will be required to sign the 3-party agreement for utility work in E. Fire Tower Road. If bonding is required in association with the encroachment agreements, it will be the responsibility of the City.

8.5 NEPA Documentation

Because the applicant is applying for Federal assistance for a flood hazard reduction project with FEMA BRIC funding, the project must be reviewed for compliance with the Department of Homeland Security (DHS) Environmental and Historic Preservation (EHP) laws, regulations, and Executive Orders, referred to collectively as EHP requirements. These requirements are intended to protect water, air, coastal, wildlife, land, agricultural, historic, and cultural resources. There are more than twenty Federal EHP requirements that may be applicable to flood hazard reduction projects. The Overview of Applicable Federal EHP Requirements are listed below:

- A. Clean Air Act (16 U.S.C. §470 et seq.).
- B. Clean Water Act 33 (U.S.C. §1251 et seq.).
- C. Coastal Barrier Resources Act (16 U.S.C. §3501 et seq.).
- D. Coastal Zone Management Act (16 U.S.C. §1451 et seq.).
- E. Endangered Species Act (16 U.S.C. §1531 et seq.).
- F. Farmland Protection Policy Act (7 U.S.C. §4201 et seq.).
- G. Marine Mammal Protection Act (16 U.S.C. §1361 et seq.).
- H. Migratory Bird Treaty Act (16 U.S.C. §703-712).
- I. National Historic Preservation Act (16 U.S.C. §470 et seq.).
- J. National Marine Sanctuaries Act (16 U.S.C. §1431 et seq.).
- K. Executive Order 11988, Floodplain Management, dated May 24, 1977.
- L. Executive Order 11990, Protection of Wetlands, dated May 24, 1977.
- M. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979.
- N. Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, dated January 24, 2007.
- O. Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, dated October 5, 2009.

Figure 1 identifies the Project Area to be included in this study.

8.5.1 Data Collection

Kimley-Horn will identify, assess, and document information about the proposed project and the existing conditions on the project site. Under this task, the Consultant will:

- Request facility, operational, and construction data from the Client.
- Conduct a desktop review of available information and mapping and validate this with on-site information collected as part of other tasks in this scope of work.
- Summarize relevant environmental data pertaining to existing conditions associated with the DHS environmental impact categories within the resource-appropriate study area.
- Develop GIS exhibits illustrating the existing resources.

8.5.2 Prepare Record of Environmental Considerations

Consultant will prepare the Record of Environmental Considerations (REC) to document the application of a Department of Homeland Security (DHS) Environmental Assessment (EA) to the proposed project within Environmental Planning and Historic Preservation Decision Support System (EHP DSS). The information on this form helps support a chosen NEPA “pathway.” 8.1 As a component of the Department of Homeland Security (DHS), FEMA is required to follow DHS directives and instructions, including those related to the National Environmental Policy Act (NEPA), and its implementation procedures.

FEMA also issues its own supplemental procedures for NEPA implementation, which are detailed in FEMA Directive 108-1 and its companion instruction.

FEMA is required to consider potential environmental impacts before funding or approving actions and projects. The purpose of this EA is to analyze the potential environmental impacts of the proposed project. FEMA will oversee the preparation of this Environmental Assessment (EA) in accordance with:

- National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. §§ 4321–4370h
- U.S. Department of Homeland Security’s (DHS) Directive No. 023-01; rev. 1, Implementation of the National Environmental Policy Act (October 31, 2014)
- DHS Instruction Manual No. 023-01-001-01, rev. 1, Implementation of the National Environmental Policy Act (November 6, 2014)
- FEMA Directive No. 108-01, Environmental Planning and Historic Preservation Responsibilities and Program Requirements (August 22, 2016)
- FEMA Instruction 108-01-1, Instruction on Implementation of the Environmental and Historic Preservation Responsibilities and Program Requirements (August 22, 2016)

FEMA will use the findings in this EA to determine whether to prepare an Environmental Impact Statement for the proposed project or to issue a Finding of No Significant Impact (FONSI).

8.5.3 Alternative Development

Three reasonable and feasible alternatives will be qualitatively reviewed for the project. At the conclusion of the alternative review process, one build alternative will be selected and carried forward into the Environmental Consequences chapter of the EA as the preferred alternative for additional analysis, along with the No Action Alternative. The selection of a Preferred Alternative is a milestone in the development of the EA and will require the City’s and FEMA concurrence.

If additional alternatives are needed, it will be considered Additional Services. The alternatives will be reviewed with the City and FEMA, and a preferred alternative will be selected based on the available data and City input. Kimley-Horn will summarize the alternatives in the Alternatives chapter of the EA; only the preferred alternative will be evaluated in detail in the Affected Environment chapter of the EA.

Description of Proposed Action and Alternatives

The purpose of this task is to develop a description of the proposed action and alternatives, including a description of the eliminated alternatives. This description will be submitted preliminarily to the Client and FEMA for approval and can be used in coordination with other agencies if needed.

Kimley-Horn will develop graphics and narrative descriptions of the proposed action, eliminated alternatives, and no action alternative, all of which will be based on recommendations or analyses contained in previous plans as well as input from the Client. It is assumed this chapter will include a brief narrative description of up to two other eliminated build alternatives which are not analyzed in detail in this EA. This chapter will include an evaluation of the alternatives considered; this will be based on information available in previous plans or qualitative data developed as part of this project; no new quantitative analysis will be conducted as part of this evaluation. This narrative will conclude with selection of one preferred alternative, which will be evaluated in detail in the EA.

Kimley-Horn will develop a description of the proposed action and alternatives through coordination with the Client, hold up to two meetings with the Client and FEMA during development of the proposed action and alternatives, submit the draft description of proposed action and alternatives to the Client for review, and following receipt of comments, revise the description of proposed action and alternatives and submit to FEMA for review. Final revisions will be incorporated into the draft EA.

8.5.4 Affected Environment and Environmental Consequences

The level of detail needed to address environmental impact categories depends on the nature of the resource and the potential for impacts. The environment which may be impacted if the proposed action is implemented will be identified and described in the existing conditions section of the EA. Appropriate and necessary data will be mapped and presented in graphic form. Background information will be gathered, and field investigations will be conducted to augment existing data as necessary for various disciplines.

Detailed descriptions for resource-specific modeling, studies, or field work needed to complete the environmental impact analysis are described below. It is assumed that there will be no major environmental conditions (such as cultural resources, endangered species, rare forms of vegetation, or unusual water quality or drainage conditions) that would have not previously been identified in other reports, studies, and/or environmental documents that would necessitate additional analysis beyond that which is specified in this scope of work. The need for any additional analyses would be determined through coordination with the Client and FEMA, or based on results of the early coordination process.

A project area will be identified to encompass potential temporary and permanent impacts. Individual study areas will be developed for specific resource evaluations as appropriate.

8.5.5 Environmental Assessment (EA)

Preliminary Draft EA

Kimley-Horn will develop a Preliminary EA Draft for the City and FEMA review and will revise the draft based on comments. Following a second review by the City and FEMA, a revised draft will be submitted for a 30-day cooperating agency and FEMA legal review. Kimley-Horn will revise the draft based on comments and will compile a summary of comments and responses. The EA and all attachments will be Section 508 compliant.

Kimley-Horn will prepare a summary version of the EA Draft and will respond to comments from the City and FEMA prior to document publication.

Kimley-Horn will prepare a draft public Notice of Availability for the City and FEMA and will submit an electronic copy of the EA Draft to the City for publication on its website.

Final EA

Kimley-Horn will summarize all comments received on the Draft EA from agencies and the public and will provide draft responses to comments for review by the City and FEMA. The EA Draft will be revised to respond to comments as appropriate and include the summary of comments received. Kimley-Horn will submit the Preliminary Final EA to the City and FEMA for review and will revise it based on comments. Following a second review by the City and FEMA, a revised document will be prepared.

Kimley-Horn will prepare a draft public Notice of Availability for the City and FEMA. FEMA will arrange for publication of the Notice of Availability in the Federal Register. Kimley-Horn will summarize all comments received on the Final EA from agencies and the public and will provide draft responses to comments for review and finalization by the City and FEMA.

Task 9. Additional Services

Unspecified Services: For budgetary purposes, this task allocates a sum of money that can be designated at a future date to cover Unspecified Services. City approval for the future task and budget will be required.

Meetings

Meetings will be included with the relevant task fee. Below is a listing of anticipated meetings included throughout the project:

1. Progress iTask 1 including KH, KCI, ICF at meetings. Other subconsultants to attend as warranted (Task 1)
 - a. Monthly – virtual (10)
 - b. Quarterly – in person (5)
2. Grant Management Coordination (Task 5) – virtual (6)
3. Milestone Review (Task 6) – virtual (3)
4. Public (Task 7) – in person (2)
5. Winterville Charter Academy and Greenville Fire/Rescue (Task 7) – virtual (2)
6. NEPA Client Coordination – virtual (2)

~~A1.01 Study and Report Phase~~

~~A. Engineer shall:~~

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.~~
- ~~2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. Identify and evaluate [insert specific number or list here] alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.~~
- ~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables: [here list any such tasks or deliverables]~~
- ~~7. Furnish ____ review copies of the Report and any other deliverables to Owner within ____ calendar days of the Effective Date and review it with Owner. Within ____ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~
- ~~8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish ____ copies of the revised Report and any other deliverables to the Owner within ____ calendar days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.~~

~~A1.02 Preliminary Design Phase~~

- ~~A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:~~
- ~~1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.~~
 - ~~2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.~~
 - ~~3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.~~
 - ~~4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.~~
 - ~~5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: [here list any such tasks or deliverables]~~
 - ~~6. Furnish ____ review copies of the Preliminary Design Phase documents and any other deliverables to Owner within ____ calendar days of authorization to proceed with this phase, and review them with Owner. Within ____ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.~~
 - ~~7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner ____ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within ____ calendar days after receipt of Owner's comments.~~
- ~~B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.~~

A1.03 Final Design Phase

- ~~A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and Upon written authorization from Owner, Engineer shall perform services in accordance with **Exhibit A**.~~
- A. Engineer's services under the Final Design Phase will be considered complete within 13 months of full contract execution and Notice to Proceed (NTP) from Owner, when the submittals required

by Exhibit A have been delivered to Owner. The project schedule above assumes a NTP by July 1, 2025, and it assumes 14 calendar day milestone reviews by the City, issuance of US Army Corps and NCDEQ permits within 60 calendar days of the permit application, and FEMA CLOMR approval within 90 calendar days of application. Note that the timeline of approvals, permit issuance, and property owner voluntary easement discussions is beyond the Engineer's control.

- ~~B. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.~~
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

~~A1.02 Bidding or Negotiating Phase~~

- ~~A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:~~
- ~~1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.~~
 - ~~2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.~~
 - ~~3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.~~
 - ~~4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.~~
 - ~~5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~
 - ~~6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.~~

~~7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables as required by Exhibit A, Attachments 1 and 2.~~

~~B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).~~

~~A1.03 Construction Phase~~

~~A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:~~

~~1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.~~

~~2. Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. [If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D.]~~

~~3. Selecting Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.~~

~~4. Pre-Construction Conference: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.~~

~~5. Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~

~~6. Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.~~

~~7. Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:~~

~~a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations~~

~~by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.~~

- ~~b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.~~
- ~~8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.~~
- ~~9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.~~
- ~~10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.~~

- ~~11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.~~
- ~~12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~
- ~~13. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.~~
- ~~14. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.~~
- ~~15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~
- ~~a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, 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, and to any other qualifications stated in the recommendation), and 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 Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include~~

final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- b. ~~By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. 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 on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~
16. ~~Contractor's Completion Documents:~~ Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
17. ~~Substantial Completion:~~ Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
18. ~~Additional Tasks:~~ Perform or provide the following additional Construction Phase tasks or deliverables: [here list any such tasks or deliverables].
19. ~~Final Notice of Acceptability of the Work:~~ Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

~~B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.~~

~~C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.~~

~~A1.04 *Post Construction Phase*~~

~~A. Upon written authorization from Owner during the Post Construction Phase Engineer shall:~~

~~1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.~~

~~2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.~~

~~1. Perform or provide the following additional Post Construction Phase tasks or deliverables:
{Here list any such tasks or deliverables}~~

~~B. The Post Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.~~

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types as set forth in **Exhibit A (Task 9)**.

~~1. Unspecified Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and~~

- impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- ~~2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.~~
 - ~~3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.~~
 - ~~4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.~~
 - ~~5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.~~
 - ~~6. Providing renderings or models for Owner's use.~~
 - ~~7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.~~
 - ~~8. Furnishing services of Consultants for other than Basic Services.~~
 - ~~9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.~~
 - ~~10. Services during out of town travel required of Engineer other than for visits to the Site or Owner's office.~~
 - ~~11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.~~
 - ~~12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.~~

- ~~13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.~~
- ~~14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.~~
- ~~15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.~~
- ~~16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.~~
- ~~17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.~~
- ~~18. Preparation of operation and maintenance manuals.~~
- ~~19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.~~
- ~~20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.~~
- ~~21. Assistance in connection with the adjusting of Project equipment and systems.~~
- ~~22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.~~
- ~~1. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record keeping.~~
- ~~23. Overtime work requiring higher than regular rates.~~
- ~~25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.~~

~~A2.02 Additional Services Not Requiring Owner's Written Authorization~~

- ~~A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.~~

- ~~24. Services in connection with work change directives and change orders to reflect changes requested by Owner.~~
- ~~25. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
- ~~26. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~
- ~~27. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.~~
- ~~28. Services (other than Basic Services during the Post Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.~~
- ~~29. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.~~
- ~~30. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.~~
- ~~31. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.~~
- ~~32. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.~~

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- E. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- F. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- G. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- H. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- I. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- J. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- K. Place and pay for advertisement for Bids in appropriate publications.
- L. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- M. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- N. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- O. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties,

responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- P. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- Q. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- R. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- S. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- T. Perform or provide the following additional services: *[Here list any such additional services]*.

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services - Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A total lump sum amount \$ 1,487,385.00 based on the following estimated distribution of compensation.

Task	Description	Fee
1	Project Management	\$103,750
2	Field Data Collection	\$22,180
3	Hydrologic and Hydraulic Modeling	\$93,210
4	Utility Coordination and Design	\$28,000
5	Grant Management	\$7,135
6	Construction Documents	\$389,205
7	Public Engagement and PO Coordination	\$44,020
8	Permitting	\$208,480

	Subconsultant KCI	\$445,310
	Subconsultant ICF	\$62,445
	Subconsultant Falcon	\$21,100
	Subconsultant Three Oaks	\$49,000
	Basic Services Subtotal	\$1,473,835
	Reimbursable Expenses	\$13,550
	Total	\$1,487,385

2. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum amount includes compensation for Engineer's services and services of Engineer's Consultants. The Lump Sum amount accounts for labor, overhead, profit, and reimbursable expenses.
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
5. Period of Service: The compensation amount stipulated in the Compensation Packet BC-1 is conditioned on a period of service that begins upon receipt of signed contract and will end when the Final Design is completed. If such period of service is extended, the compensation amount for the Engineer's services shall be appropriately adjusted.

**COMPENSATION PACKET AS-1:
Additional Services – Lump Sum**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Additional Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:
1. Lump Sum amounts as identified below based on the following compensation:
 - a. Additional Services \$100,000.00
 2. ~~Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.~~
 3. The Lump Sums include compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum costs included in Paragraph C2.05.A.1 to account for labor, overhead, profit, and Reimbursable Expenses.
 4. The portion of the Lump Sum amounts billed for Engineer's Additional Services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- B. *Period of Service:* The compensation amounts stipulated in Paragraph C2.05.A.1 are conditioned on the period of service as identified in Paragraph C2.01.A.5. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. ~~The Standard Hourly Rates apply only as specified in Article C2.~~

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

Classification	<i>Rate</i>
Associate Engineer	\$275 - \$375
Senior Professional II	\$250 - \$355
Senior Professional I	\$185 - \$265
Professional II	\$175 - \$250
Professional I	\$150 - \$210
Analyst	\$130 - \$190
Technical Support	\$110 - \$205
Support Staff	\$90 - \$150

Effective through June 30, 2026

Subject to annual adjustment thereafter

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|--|-------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident: | \$100,000 |
| 2) Disease, Policy Limit: | \$500,000 |
| 3) Disease, Each Employee: | \$100,000 |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |
| 2) General Aggregate: | \$2,000,000 |
| d. Excess or Umbrella Liability -- | |
| 1) Each Occurrence: | \$2,000,000 |
| 2) General Aggregate: | \$2,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| Each Accident | \$1,000,000 |
| f. Professional Liability -- | |
| 1) Each Claim Made | \$1,000,000 |
| 2) Annual Aggregate | \$2,000,000 |
| g. Other (specify): | \$ N/A |

~~2. By Owner:~~

a. ~~Workers' Compensation:~~ _____ ~~Statutory~~

b. ~~Employer's Liability~~ _____

1) ~~Each Accident~~ _____ \$ _____
2) ~~Disease, Policy Limit~~ _____ \$ _____
3) ~~Disease, Each Employee~~ _____ \$ _____

c. ~~General Liability~~ _____

1) ~~General Aggregate:~~ _____ \$ _____
2) ~~Each Occurrence (Bodily Injury and Property Damage):~~ _____ \$ _____

d. ~~Excess Umbrella Liability~~ _____`

1) ~~Each Occurrence:~~ _____ \$ _____
2) ~~General Aggregate:~~ _____ \$ _____

e. ~~Automobile Liability—Combined Single Limit (Bodily Injury and Property Damage):~~

Each Accident:

\$ _____

f. ~~Other (specify):~~ _____ \$ _____

C. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

a. _____
Engineer

b. _____
Engineer's Consultant

c. _____
Engineer's Consultant

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

9.1.1.1 This is EXHIBIT J, consisting of 4 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____, _____.

Special Provisions

The Agreement is amended to include the following agreement(s) of the parties:

Federal Requirements

Task 10. This Contract will be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This section identifies the federal requirements that may be applicable to this contract. The Vendor is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

Task 11.

Task 12. To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Vendor pursuant to its obligations under this Contract. The Vendor and its sub-contractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Access to Records

The following access to records requirements apply to this contract:

- (1) The contractor agrees to provide the City of Greenville, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide City access to construction or other work sites pertaining to the work being completed under the contract.

Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. A Contractor's failure to do so shall constitute a material breach of the contract.

Termination for Convenience (General Provision)

The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision)

The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) calendar after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Equal Opportunity

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, 3 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding

upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act.

Suspension and Debarment

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Suspension and Debarment Certification

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Title VI of the Civil Rights Act of 1964 Nondiscrimination Provisions, Appendices A & E.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, creed (religion), low-income, limited English proficiency, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the USDOT to be

pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

- I. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following

nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq);
- Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity).

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____

b. Net change for prior amendments: \$ _____
c. This amendment amount: \$ _____
d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date Signed: _____



NC Department of Public Safety
EMERGENCY MANAGEMENT

Josh Stein, Governor

Eddie M. Buffaloe Jr., Secretary
William C. Ray, Director

19 March 2025

Mr. Daryl Norris
Civil Engineer III
City of Greenville
200 West Fifth St.
Greenville, NC 28858

Dear Mr. Norris,

North Carolina Emergency Management (NCEM) is pleased to inform you that your East Firetower Road grant application for the Emergency Management Disaster Relief and Mitigation Fund has been reconsidered and selected for funding up to the amount of \$1,500,000. NCEM was able to coordinate with North Carolina Department of Environmental Quality (DEQ) who provided the funding thru the Flood Resiliency Blueprint initiative.

The final approval is conditional on the return of the attached Memorandum of Agreement (MOA), signed by the appropriately authorized representative(s) within 45 days from the date of this letter.

This grant shall be effective upon transmittal to the jurisdiction of the executed MOA by NCEM.

By accepting this grant, the recipient agrees that funds will only be expended to complete the approved project, not to exceed the funding amount during the designated period of performance, as well as all applicable terms, conditions, and responsibilities specified in the MOA.

If you have any questions please contact Mr. Jeff Welker, NCEM Long-Term Recovery Grants Manager, directly (984-222-4159 or Jeffrey.Welker@ncdps.gov).

Respectfully,

Signed by:

William C. Ray

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Director & Deputy Homeland Security Advisor
North Carolina Emergency Management



RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF DISASTER RELIEF MITIGATION
FUND GRANT AGREEMENT WITH THE NC DEPARTMENT OF PUBLIC SAFETY FOR
THE DRAINAGE IMPROVEMENTS AND STREAM RESTORATION AT EAST FIRETOWER
ROAD PROJECT.

WHEREAS, the North Carolina Division of Emergency Management in the NC Department of Public Safety is offering a program known as Disaster Relief and Mitigation Fund (DRMF); and

WHEREAS, The DRMF was authorized by the 2023 Appropriations Act (*S.L. 2023134*, § 5.6(f)), providing \$30 million in funding availability to support the development of more resilient communities across North Carolina.

WHEREAS, The North Carolina Department of Environmental Quality (DEQ) Flood Resiliency Blueprint is working with North Carolina Emergency Management (NCEM) to implement infrastructure projects to reduce flooding and associated damaged. DEQ is providing over \$3.9 million for three NCEM projects that will target flooding in Greenville, Fayetteville and Sanford.; and

WHEREAS, the City of Greenville carefully considers grant programs that assist the City in achieving projects and programs that are priorities for the community; and

WHEREAS, actions taken through this Program may result in lower flood insurance premiums through the Community Rating System and improved resiliency; and

WHEREAS, this program is available to certain municipalities in the State of North Carolina as sub-applicants under the North Carolina application; and

WHEREAS, the City of Greenville's application for the Drainage Improvements and Stream Restoration at East Firetower Road project was selected for funding up to the amount of \$1,500,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA:

1. That the City Manager is authorized to execute and file the Assurances and other documents the North Carolina Emergency Management requires before awarding a grant or cooperative agreement.

3. That the City Manager is authorized to submit additional information as the North Carolina Department Emergency Management may require in connection with the applications or projects.
4. That the City Manager is authorized to set forth and execute affirmative minority business policies in connection with the project.
5. That after certification of funds by the Chief Financial Officer, the City Manager is hereby authorized to execute the grant agreements on behalf of the City of Greenville and that their signature constitutes acceptance of the terms and conditions of the grant agreements.

ADOPTED this the 5th day of May, 2025.

P.J. Connelly, Mayor

CERTIFICATION

The undersigned duly qualified City Clerk, acting on behalf of the City of Greenville, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Greenville City Council on 5th day of May, 2025.

Valerie Shiuwegar, City Clerk

Date

SEAL



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Authorization to Extend Sewer Services By Greenville Utilities Commission to the Proposed Pitt County Megasite Property Without Requiring a Petition for Voluntary Annexation

Explanation: The State of North Carolina has identified several possible megasites for large-scale industrial development and Pitt County is one of several counties evaluated and selected to participate in the Megasite Readiness Program. There is over \$100 million in funds available from the State of North Carolina to complete due diligence and site preparation for the Pitt County Megasite, and preliminary steps to access this funding are necessary, including ownership of the property or an option agreement to purchase the property by the grant applicant.

The City of Greenville (the City), Pitt County, Greenville Utilities Commission (GUC), Greenville ENC Alliance, Weyerhaeuser and other economic development partners are collaborating to develop the Pitt County Megasite. The Pitt County Megasite is located north of Greenville in an unincorporated area of Pitt County and currently owned by Weyerhaeuser. At a later date, the Pitt County Megasite will ultimately be conveyed to Pitt County for development. Development of the Pitt County Megasite will provide an opportunity to create jobs and increase County tax revenue from secondary economic activity.

There will be several phases of development for the Pitt County Megasite, including the extension of sewer. Based on GUC's charter, GUC is required to obtain approval from City Council to extend sewer to properties located outside of the City's jurisdiction, which includes the extraterritorial jurisdiction, without a petition for voluntary annexation.

The development partners are ensuring opportunities for public participation, and to date, the development partners have hosted four public information sessions:

- Monday, March 31st - Pitt County Agriculture Center
- Thursday, April 3rd - Ayden Middle School
- Tuesday, April 8th - Wellcome Middle School
- Thursday, April 17th – Virtual
-

Notification about these engagement opportunities was distributed using multiple methods, including, canvassing, newspaper ads, social media, and a dedicated project website. A total of approximately 160 individuals attended the

recently held public information sessions.

Some of the common themes of input from the community, included but are not limited to:

- Transparency
- Infrastructure
- Environmental, Community and Industry Impacts
- Stormwater Mitigation
- Future Annexation Requirements
- Development Funding
- Evaluation of Alternative Sites

As phases of development are implemented, development partners will offer ongoing opportunities for engagement, including public hearings related to the rezoning process and updated information on the dedicated project website.

Proposed next steps and timeline, include:

April 2025	Resolution Authorizing Extension of Sewer Presented to GUC Board for Approval
May 2025	Resolution Authorizing Extension of Sewer Presented to City Council for Approval Rezoning Request
June 2025	Rezoning Request Presented to Pitt County Planning & Development for Approval
June 2025	Option to Purchase Secured on the Property by Pitt County (Non-Binding)
July 2025	Rezoning Request Presented to Pitt County Commissioners for Approval
July/August	Application to Receive Grant Funding Submitted to Economic Development Partnership of North Carolina (EDPNC) for Consideration

On April 17, 2025, GUC's Board of Commissioners approved the resolution to authorize the provision of sewer to the Pitt County Megasite. Approval of this request by the City Council will allow the project to move to the next step of Pitt County submitting a request to rezone the Pitt County Megasite from rural agricultural to general industrial, and submission of the application to receive grant funding for consideration by EDPNC.

Fiscal Note:

There will be no cost to the City for authorizing GUC to extend sewer to the Pitt County Megasite property without requiring a petition for voluntary annexation.

Recommendation:

Approve the request and authorize GUC to extend sewer to the Pitt County

Megasite without requiring a petition for voluntary annexation.



City of Greenville, North Carolina

Meeting Date: 05/05/2025

<u>Title of Item:</u>	Resolution to Authorize City Manager to Accept Donation of Real Property Located at 0 E Fire Tower Rd., Winterville, NC, 28590, Further Described as Tax Parcel 84009, to the City of Greenville from Lewis Land Development, LLC
<u>Explanation:</u>	<p>Harvey Lewis owns real property on Fire Tower Rd. identified as Tax Parcel 84009. The subject property is a 110-foot former fire watch tower located on a .018 acre or 786 square foot site with permanent access and maintenance easements from the Fire Tower Road corridor via the adjoining land. The historic tower is an icon with significant importance to the community. An appraisal was conducted valuing the "As Is" Market Value of the property at \$520,000. The City is interested in acquiring the property for its significance as a landmark and to be used as part of a City Public Art Project.</p> <p>City staff recommends Council adopt the resolution authorizing City Manager to accept donation of real property by Lewis Land Development, LLC, if the results of due diligence efforts are favorable to the City.</p>
<u>Fiscal Note:</u>	There will be minimal fiscal impact. The City may obtain a title search and take other due diligence measures to protect its interest.
<u>Recommendation:</u>	Authorize City Manager to accept this donation of real property by Lewis Land Development, LLC, located at 0 Fire Tower Rd., Winterville, NC, 28590, tax parcel 84009, if results of due diligence efforts are favorable to the City and provide further authorization for City Manager or Mayor to execute all documents necessary to finalize the conveyance.

ATTACHMENTS

- ☐ [Resolution-Lewis Land Development LLC Property Donation to COG.pdf](#)
- ☐ [Parcel Number 084009.pdf](#)

RESOLUTION NO. _____

**RESOLUTION TO AUTHORIZE CITY MANAGER TO ACCEPT THE DONATION OF
REAL PROPERTY TO THE CITY OF GREENVILLE FROM LEWIS LAND
DEVELOPMENT, LLC.**

WHEREAS, the City of Greenville is a body politic existing and corporate in accordance with North Carolina General Statute §160A-1; and

WHEREAS, the City of Greenville has authority pursuant North Carolina General Statute §160A-11 to acquire and hold real property conveyed, dedicated to, or otherwise acquired by the municipality; and

WHEREAS, Lewis Land Development LLC, a North Carolina Limited Liability Company, desires to donate and convey tax parcel 84009, approximately .018 acre or 786 square foot site of land located at 0 E Fire Tower Rd., Winterville, NC, 28590, adjacent to the south side of East Fire Tower Road adjacent to the Greenville city limit; and

WHEREAS, the property to be donated and conveyed to the City of Greenville is further described as:

“BEGINNING at the southern side line of SR #1708 at a point in the dividing ditch between the lands of Roy Cox and Russell Fussell. Said point being witnessed by a concrete monument standing north 64 degrees 30 minutes east 10 feet from said ditch and from said point so fixed, and with the southern margin of the right of way of SR #1708 north 64 degrees 30 minutes east 300 feet to an iron pipe in the southern margin of the right of way; thence with the line of Russell Fussell south 15 degrees east 290.4 feet to an iron pipe thence with another line of Russell Fussell’s land south 64 degrees 30 minutes west 300 feet to the center line of the aforementioned ditch dividing Cox and Fussell. Said point being witnessed by an iron pipe located north 64 degrees 30 minutes east 5 feet from the bank of the dividing ditch; thence with the center line of the dividing ditch north 1 degrees west 290.4 feet to the point of beginning, containing 2 acres of land as per survey of W.B. Duke, Registered Surveyor, July 3, 1964, in Winterville Township, Pitt County, North Carolina.

Being the same property conveyed to the State of North Carolina by Lila Mae Fussell and husband, Russell G. Fussell in a deed dated November 9th, 1964 and recorded in Book U34, Page 636, Pitt County Registry, reference to which deed is hereby made for a more particular description.

The Grantor includes in this conveyance that certain observation tower situated on the above-described property.”

WHEREAS, Lewis Land Development, LLC, plans to execute a general warranty deed to the City of Greenville conveying said property to the City to be used as part of a public art project.

WHEREAS, the subject property has been appraised for an “As Is” Market Value of \$520,000.

WHEREAS, the City Council has determined that acceptance of the property as described is not contrary to the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE THAT:

1. The City Manager is authorized to accept this donation of real property located at 0 Fire Tower Rd., Winterville, NC, 28590, tax parcel 84009, by Lewis Land Development, LLC, if the results of due diligence efforts are favorable to the City.
2. Council authorizes City Manager or Mayor to execute all requisite documents to complete the conveyance and negotiate any additional terms necessary for carrying out donation.

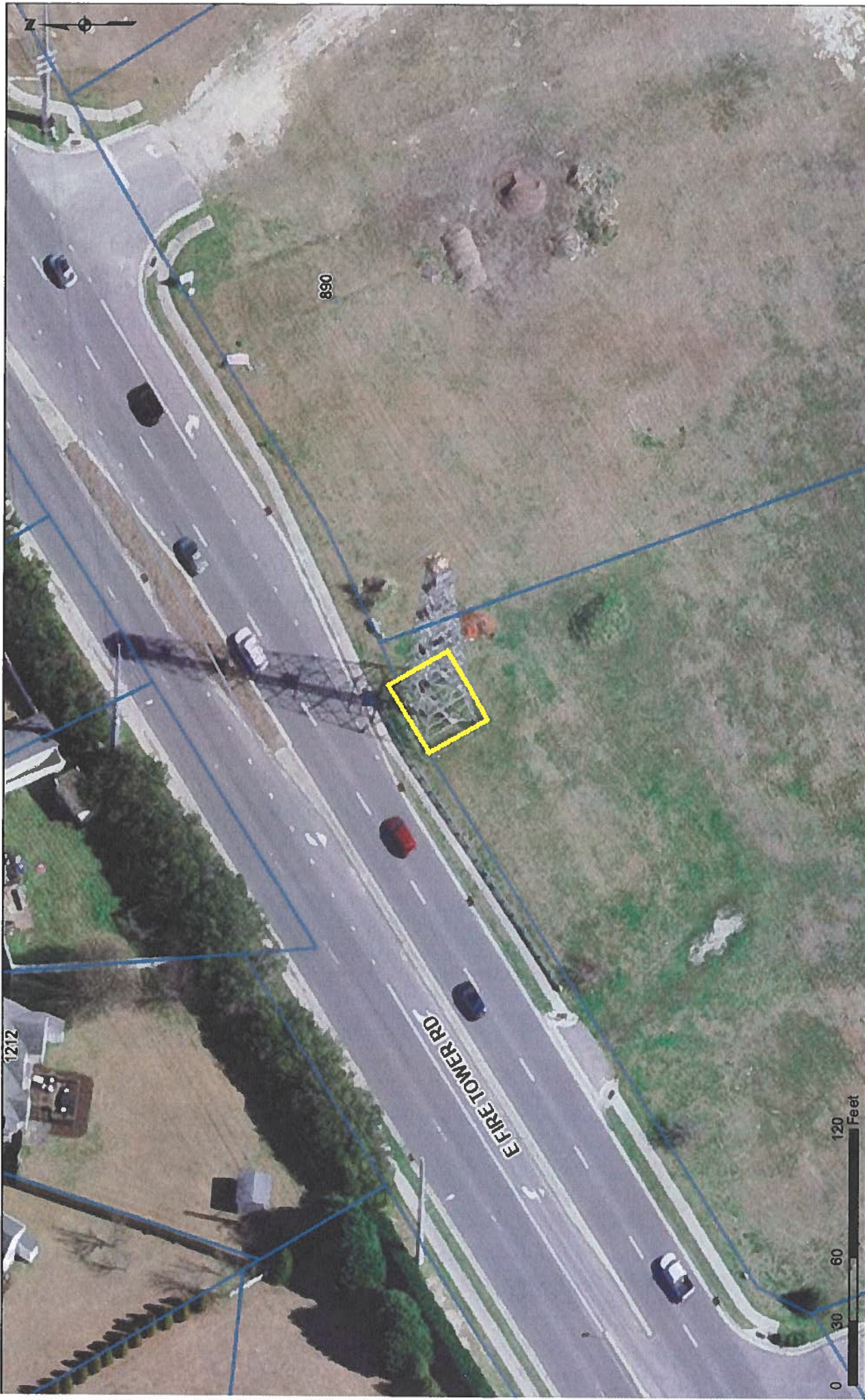
ADOPTED this the _____ day of _____, 2025.

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

SEAL



PROPERTY ADDRESS: 0 E FIRE TOWER RD

OWNER:
LEWIS LAND DEVELOPMENT LLC
113 SLANEY LOOP
WINTERVILLE NC 28590

April 22, 202

PARCEL NUMBER: 084009
USE CODE:
YEAR BUILT:
TOTAL SQF:
HEATED SQF: HEATED
ACRES: 0

DEED REF: 002507-00775
SALES PRICE:
SALES MO, YR:
REVAL YEAR:

BUILDING VALUE: 0
LAND VALUE: 6968
TOTAL TAX VALUE: 6968



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item: Presentation of the City of Greenville Fiscal Year 2025-2026 Proposed Budget

Explanation: As included in the budget schedule adopted by City Council, the City Manager and staff will present the City of Greenville Proposed Fiscal Year 2025-2026 Operating Budget during the May 5, 2025, City Council meeting.

In compliance with Section 160A-148(5) of the North Carolina General Statutes, the City Council will hold a public hearing on Monday, June 9, and consider adopting the annual budget ordinance on Thursday, June 12.

In summary, the Proposed City Operating Budget for Fiscal Year 2025-2026 stands at approximately \$183,398,081 million with the General Fund comprising approximately 64.8% of the total. The following is a breakdown of the Proposed Budget by Operating Fund:

General	\$ 118,864,369
Debt Service	7,368,819
Public Transportation (Transit)	4,869,989
Fleet Maintenance	6,577,898
Sanitation	11,900,000
Stormwater	11,390,000
Housing	1,975,598
Health Insurance	14,900,000
Vehicle Replacement	3,601,408
Facilities Improvement	1,200,000
Occupancy Tax	750,000
TOTAL	\$ 183,398,081

The City Manager and staff will present an overview of the specific highlights of each fund's Proposed Budget at the May 5, 2025 City Council meeting. During the May 8, 2025 City Council meeting, representatives from the Pitt-Greenville Convention and Visitors Authority, Sheppard Memorial Library, and Greenville Utilities Commission will present their proposed Fiscal Year 2025-2026 budgets.

Fiscal Note: The final amount for the City's budget will be determined by City Council action at the June 12, 2025, City Council meeting.

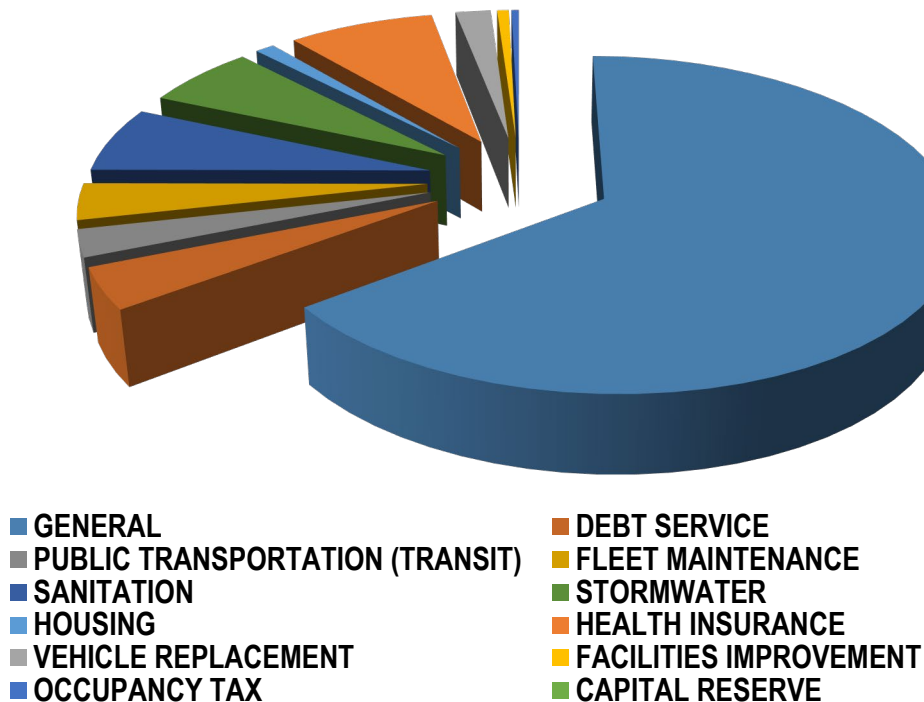
Recommendation: Receive the presentation on the Proposed Fiscal Year 2025-2026 Operating Budget and provide feedback and direction.

ATTACHMENTS

☐ [2026 Draft Budget Charts.pdf](#)

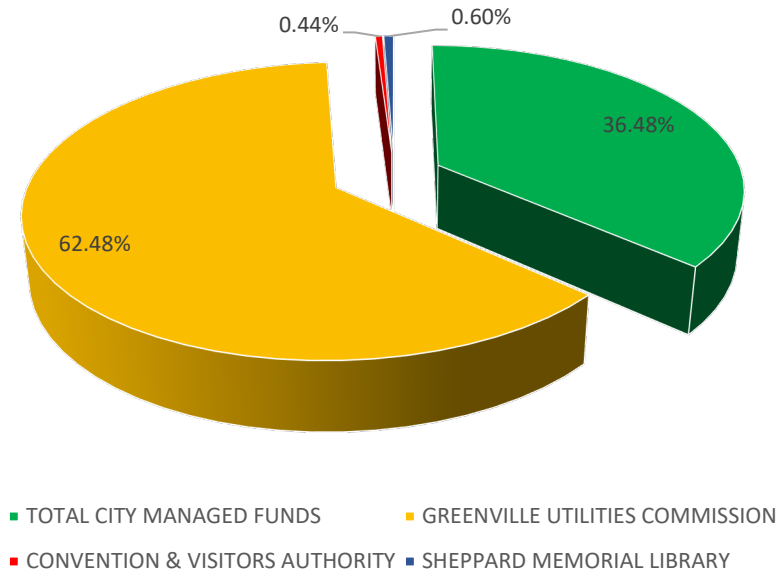
CITY MANAGED FUNDS FOR FISCAL YEAR 2026 BUDGET

FUND	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
GENERAL	\$ 91,528,605	\$ 97,969,096	\$ 107,427,399	\$ 112,819,004	\$ 118,864,369
DEBT SERVICE	5,331,090	6,285,268	6,471,125	7,368,819	7,368,819
PUBLIC TRANSPORTATION (TRANSIT)	2,909,300	2,965,770	3,269,836	5,094,474	4,869,989
FLEET MAINTENANCE	5,320,099	6,244,530	6,404,723	6,523,088	6,577,898
SANITATION	6,900,301	8,518,206	8,923,159	9,492,950	11,900,000
STORMWATER	5,798,188	7,037,053	11,175,309	13,514,558	11,390,000
HOUSING	2,189,249	2,054,247	2,355,109	3,923,790	1,975,598
HEALTH INSURANCE	13,598,002	11,951,888	13,667,788	14,376,368	14,900,000
VEHICLE REPLACEMENT	3,163,269	2,984,087	3,843,091	3,601,408	3,601,408
FACILITIES IMPROVEMENT	1,272,859	1,252,331	1,546,966	1,200,000	1,200,000
OCCUPANCY TAX	534,744	376,675	1,136,930	2,604,334	750,000
CAPITAL RESERVE	-	1,250,000	-	-	-
TOTAL CITY MANAGED FUNDS	\$ 138,545,705	\$ 148,889,150	\$ 166,221,436	\$ 180,518,793	\$ 183,398,081



BUDGET COMPARISON FOR CITY MANAGED FUNDS & INDEPENDENT AGEN FOR FISCAL YEAR 2026 BUDGET

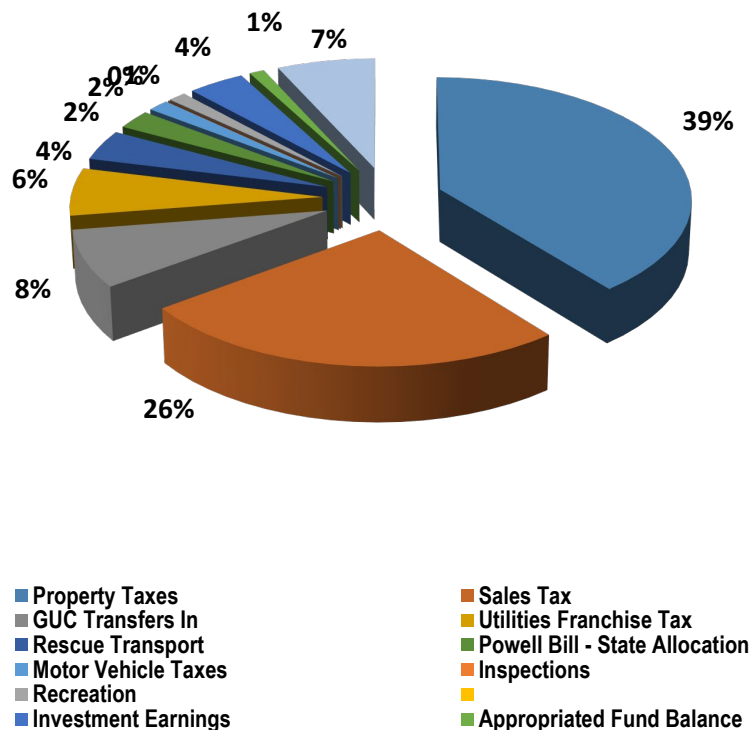
FUND	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
GENERAL	\$ 91,528,605	\$ 97,969,096	\$ 107,427,399	\$ 112,819,004	\$ 118,864,369
DEBT SERVICE	5,331,090	6,285,268	6,471,125	7,368,819	7,368,819
PUBLIC TRANSPORTATION (TRANSIT)	2,909,300	2,965,770	3,269,836	5,094,474	4,869,989
FLEET MAINTENANCE	5,320,099	6,244,530	6,404,723	6,523,088	6,577,898
SANITATION	6,900,301	8,518,206	8,923,159	9,492,950	11,900,000
STORMWATER	5,798,188	7,037,053	11,175,309	13,514,558	11,390,000
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VEHICLE REPLACEMENT	3,163,269	2,984,087	3,843,091	3,601,408	3,601,408
FACILITIES IMPROVEMENT	1,272,859	1,252,331	1,546,966	1,200,000	1,200,000
OCCUPANCY TAX	534,744	376,675	1,136,930	2,604,334	750,000
CAPITAL RESERVE	-	1,250,000	-	-	-
TOTAL CITY MANAGED FUNDS	\$ 138,545,705	\$ 148,889,150	\$ 166,221,436	\$ 180,518,793	\$ 183,398,081
GREENVILLE UTILITIES COMMISSION	\$ 270,670,030	\$ 279,309,810	\$ 289,671,654	\$ 302,227,045	\$ 314,107,956
CONVENTION & VISITORS AUTHORITY	1,745,069	1,972,090	2,410,149	2,055,832	2,223,146
SHEPPARD MEMORIAL LIBRARY	2,543,572	2,823,374	2,810,296	3,265,306	2,994,650
TOTAL INDEPENDENT AGENCIES	\$ 274,958,671	\$ 284,105,274	\$ 294,892,099	\$ 307,548,183	\$ 319,325,752
TOTAL ALL FUNDS	\$ 413,504,376	\$ 432,994,424	\$ 461,113,534	\$ 488,066,976	\$ 502,723,833



GENERAL FUND REVENUE SUMMARY

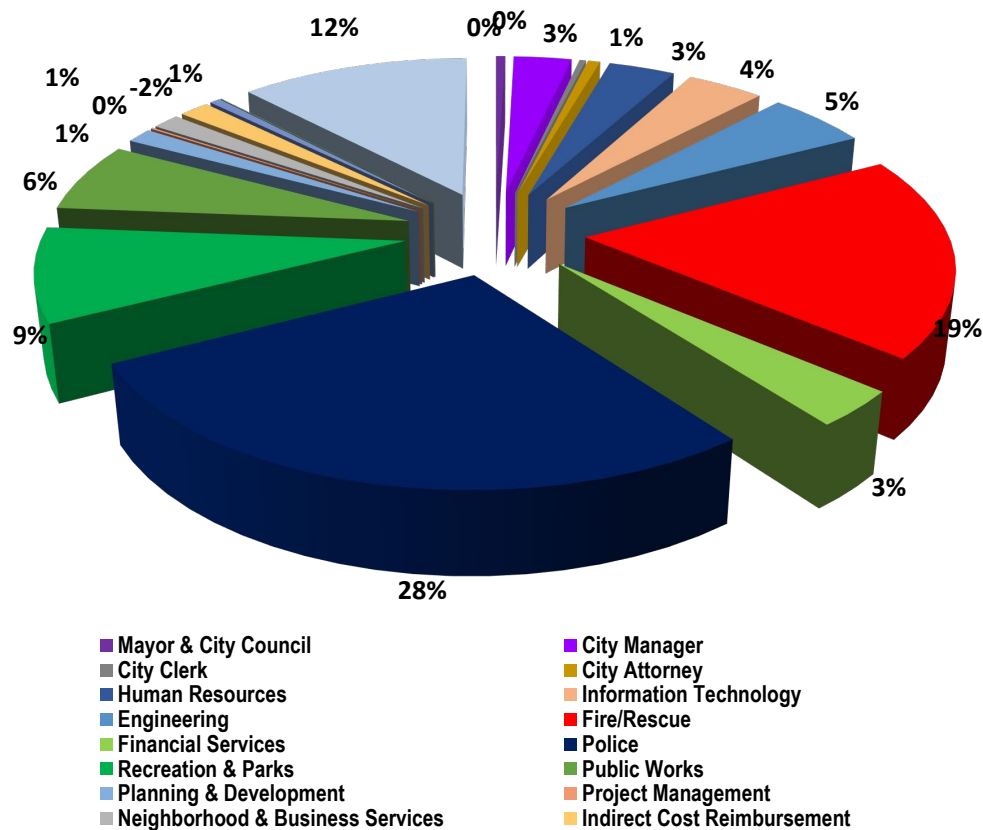
REVENUE SOURCE	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
PROPERTY TAXES	\$ 37,445,245	\$ 34,939,772	\$ 40,203,869	\$ 43,668,004	\$ 46,665,522
SALES TAXES	27,248,610	29,595,763	30,471,404	31,930,000	30,512,904
GUC TRANSFERS IN	6,746,792	7,134,995	8,307,658	8,694,000	9,053,691
UTILITIES FRANCHISE TAX	6,625,128	6,920,722	7,069,447	6,900,000	7,492,757
RESCUE TRANSPORT	3,990,787	4,167,213	3,978,823	3,500,000	4,758,234
POWELL BILL - STATE ALLOCATION	2,390,611	2,424,387	2,676,328	2,400,000	2,960,000
MOTOR VEHICLE FEES	1,675,940	1,704,390	1,689,920	1,706,000	1,803,631
INSPECTIONS*	1,623,624	1,848,571	2,836,812	1,750,000	-
RECREATION	1,255,366	1,343,420	1,503,218	1,500,000	1,500,000
INVESTMENT EARNINGS	(1,006,916)	3,249,487	5,313,318	3,600,000	4,723,564
ALL OTHER REVENUES	6,724,449	11,370,511	7,392,962	6,421,000	8,144,066
SUBTOTAL	\$ 94,719,635	\$ 104,699,230	\$ 111,443,758	\$ 112,069,004	\$ 117,614,369
APPROPRIATED FUND BALANCE					
GENERAL FUND	-	-	-	750,000	1,250,000
POWELL BILL	-	-	-	-	-
TOTAL	\$ 94,719,635	\$ 104,699,230	\$ 111,443,758	\$ 112,819,004	\$ 118,864,369

*Inspections moved to separate fund FY2025-26



GENERAL FUND EXPENSE BY DEPARTMENT

DEPARTMENT	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
MAYOR & CITY COUNCIL	\$ 521,459	\$ 448,714	\$ 674,716	\$ 606,254	\$ 594,774
CITY MANAGER	2,694,008	3,086,081	3,601,256	3,483,263	3,739,853
CITY CLERK	305,418	296,456	356,749	440,055	409,795
CITY ATTORNEY	643,118	687,032	705,483	816,242	778,519
HUMAN RESOURCES	3,134,129	3,300,534	3,781,458	3,808,579	4,288,734
INFORMATION TECHNOLOGY	3,055,009	3,478,113	4,117,208	4,614,563	4,963,701
ENGINEERING	4,686,431	4,970,134	5,689,586	5,931,869	6,511,815
FIRE/RESCUE	17,195,047	17,320,676	19,049,336	21,151,801	23,151,151
FINANCIAL SERVICES	3,011,346	3,334,965	3,403,783	4,019,795	4,163,083
POLICE	26,653,305	28,640,180	30,246,464	32,399,318	34,263,570
RECREATION & PARKS	7,227,702	8,249,229	9,553,302	9,957,375	10,778,129
PUBLIC WORKS	5,864,744	6,454,135	7,255,135	7,902,870	7,972,043
PLANNING & DEVELOPMENT	2,675,409	2,784,482	2,485,299	3,001,981	1,712,043
PROJECT MANAGEMENT	-	-	-	-	164,673
NEIGHBORHOOD & BUSINESS SERVICES	549,466	554,822	1,260,844	1,570,928	1,771,048
TOTAL BY DEPARTMENT	\$ 78,216,592	\$ 83,605,553	\$ 92,180,620	\$ 99,704,893	\$ 105,262,931
INDIRECT COST REIMBURSEMENT	\$ (1,350,453)	\$ (1,350,453)	\$ (1,350,453)	\$ (1,950,887)	\$ (1,950,887)
OTHER POST EMPLOYMENT BENEFITS	600,000	700,000	700,000	700,000	700,000
CONTINGENCY	-	-	-	40,000	40,000
TOTAL EXPENSES BY DEPARTMENT	\$ 77,466,139	\$ 82,955,100	\$ 91,530,167	\$ 98,494,006	\$ 104,052,044
TRANSFERS TO OTHER FUNDS	\$ 14,062,474	\$ 15,014,004	\$ 15,897,229	\$ 14,324,998	\$ 14,812,325
TOTAL CAPITAL IMPROVEMENTS	-	-	-	-	-
TOTAL GENERAL FUND	\$ 91,528,613	\$ 97,969,104	\$ 107,427,396	\$ 112,819,004	\$ 118,864,369



DEBT SERVICE FUND
FOR FISCAL YEAR 2026 BUDGET

The Debt Service Fund accounts for the payment of the City's debt. When payments are due, the General Fund transfers the needed funds into this fund for payment.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
OCCUPANCY TAX	\$ 646,455	\$ 680,470	\$ 725,545	\$ 665,677	\$ 665,677
TRANSFER FROM POWELL BILL	-	-	-	-	-
TRANSFER FROM GENERAL FUND	5,103,413	5,637,664	5,816,360	6,703,142	6,703,142
INVESTMENT EARNINGS	6,190	126,472	195,998	-	-
TOTAL	\$ 5,756,059	\$ 6,444,605	\$ 6,737,902	\$ 7,368,819	\$ 7,368,819

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
PRINCIPAL PAYMENTS	\$ 4,023,856	\$ 4,888,033	\$ 5,118,394	\$ 6,168,752	\$ 6,168,752
INTEREST PAYMENTS	1,255,042	1,386,453	1,341,806	1,200,067	1,200,067
CLOSING COSTS	-	-	-	-	-
OTHER	11,406	10,782	10,925	-	-
TRANSFERS OUT	40,786	-	-	-	-
TOTAL	\$ 5,331,090	\$ 6,285,268	\$ 6,471,125	\$ 7,368,819	\$ 7,368,819

**PUBLIC TRANSPORTATION (TRANSIT) FUND
FOR FISCAL YEAR 2026 BUDGET**

Planning activities remain approximately the same and are reimbursed at 80% from Federal funds. Federal operating funding remains at 50% of the total. Capital items and ADA service and preventative maintenance items requested are reimbursable at 80% Federal share.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
GRANT INCOME	\$ 2,383,899	\$ 2,179,341	\$ 2,399,294	\$ 3,959,974	\$ 3,822,289
BUS FARE/TICKET SALES	(4,542)	8,302	10,145	209,500	209,500
OTHER REVENUES	58,065	55,758	87,386	50,000	63,200
TRANSFER FROM GENERAL FUND	4,319	771,894	771,894	875,000	775,000
TRANSFER FROM OTHER FUNDS	-	-	538,670	-	-
APPROPRIATED FUND BALANCE	-	-	-	-	-
TOTAL	\$ 2,441,741	\$ 3,015,295	\$ 3,807,389	\$ 5,094,474	\$ 4,869,989

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
PERSONNEL	\$ 1,331,238	\$ 1,107,586	\$ 1,195,725	\$ 1,379,250	\$ 1,374,427
OPERATING	1,142,136	1,439,033	1,553,005	2,241,012	2,314,828
CAPITAL IMPROVEMENTS	470,548	367,992	564,117	1,474,212	1,180,734
OTHER	(34,622)	51,159	(43,012)	-	-
TOTAL	\$ 2,909,300	\$ 2,914,611	\$ 3,312,848	\$ 5,094,474	\$ 4,869,989

FLEET MAINTENANCE FUND FOR FISCAL YEAR 2026 BUDGET

The Fleet Maintenance Fund has been established as an internal service fund to account for charge-backs to the respective departments of the City for labor, fuel, and parts for items needed to maintain City vehicles.

The creation of this fund will assist the City in more accurately reflecting the true costs of the vehicle maintenance by department.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
FUEL MARKUP	\$ 1,708,839	\$ 1,793,650	\$ 1,653,162	\$ 1,804,460	\$ 1,766,550
LABOR FEES	1,286,251	1,393,154	1,971,591	2,200,767	2,113,610
PARTS MARKUP	1,201,402	1,605,120	1,956,816	1,738,362	1,894,473
COMMERCIAL LABOR MARKUP	890,126	1,097,091	667,529	729,499	753,165
OTHER REVENUES	40,102	43,832	57,359	50,000	50,100
TRANSFER FROM GENERAL FUND	-	-	-	-	-
TRANSFER FROM OTHER FUNDS	-	809,742	-	-	-
TOTAL	\$ 5,126,720	\$ 6,742,590	\$ 6,306,458	\$ 6,523,088	\$ 6,577,898

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
PERSONNEL	\$ 1,596,358	\$ 1,765,313	\$ 2,059,424	\$ 2,103,357	\$ 2,263,584
OPERATING	3,781,423	4,370,766	4,195,949	4,346,931	4,241,514
CAPITAL OUTLAY	32,022	33,809	83,379	72,800	72,800
TRANSFER TO GENERAL FUND	-	-	-	-	-
OTHER	(89,704)	74,641	65,971	-	-
TOTAL	\$ 5,320,099	\$ 6,244,530	\$ 6,338,753	\$ 6,523,088	\$ 6,577,898

SANITATION FUND FOR FISCAL YEAR 2026 BUDGET

The Sanitation Fund is established to account for the user charges, fees, and all operating costs associated with the operation of the Sanitation Division operated through the Public Works Department of the City. The Sanitation Division offers comprehensive solid waste services such as garbage, recyclable, bulky trash, leaf collection, as well as mosquito and rodent control.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
REFUSE FEES	\$ 8,450,219	\$ 8,490,978	\$ 9,010,303	\$ 8,526,000	\$ 11,593,000
CART & DUMPSTER SALES	109,267	134,538	166,143.38	229,200	130,000
OTHER REVENUES	118,360	146,763	141,773	99,400	177,000
APPROPRIATED FUND BALANCE	-	-	-	638,350	-
TOTAL	\$ 8,677,846	\$ 8,772,279	\$ 9,152,076	\$ 9,492,950	\$ 11,900,000

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
PERSONNEL	\$ 2,949,655	\$ 3,188,652	\$ 3,821,013	\$ 4,269,119	\$ 4,788,522
OPERATING	4,228,848	4,972,632	4,966,785	5,223,831	5,733,723
CAPITAL	-	-	-	-	1,377,755
DEBT SERVICE	-	250,010	-	-	-
TRANSFER TO VRF	-	-	-	-	-
OTHER	(278,201)	106,912	135,362	-	-
TOTAL	\$ 6,900,301	\$ 8,518,206	\$ 8,923,159	\$ 9,492,950	\$ 11,900,000

STORMWATER UTILITY FUND

FOR FISCAL YEAR 2026 BUDGET

The Stormwater Utility Fund is an enterprise fund established to implement the City's Stormwater Management Program. Revenue for this program is generated through a Stormwater fee paid by citizens owning improved property with buildings, parking lots, driveways, etc. The Stormwater Management Program is implemented through the Public Works Department's Engineering and Street Maintenance Divisions. It is directed at compliance with Federal and State environmental regulations through the implementation of local development regulations, capital improvements, and storm drain maintenance.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
STORMWATER UTILITY FEE	\$ 7,383,251	\$ 8,695,784	\$ 9,857,561	\$ 11,284,300	\$ 11,390,000
OTHER REVENUE	493,002	2,009,534	1,104,103	-	-
TRANSFER FROM OTHER FUNDS	-	-	-	-	-
APPROPRIATED FUND BALANCE	-	-	-	2,230,258	-
TOTAL	\$ 7,876,253	\$ 10,705,318	\$ 10,961,664	\$ 13,514,558	\$ 11,390,000

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
PERSONNEL	\$ 2,085,745	\$ 2,400,725	\$ 2,730,423	\$ 3,630,460	\$ 4,381,185
OPERATING	4,720,748	4,969,112	5,429,349	4,770,759	4,458,359
CAPITAL	897,289	2,094,727	1,808,045	2,164,665	2,114,665
OTHER	-	-	-	-	435,791
TRANSFER OUT	140,000	1,158,775	3,205,337	2,948,080	-
TOTAL	\$ 7,843,783	\$ 10,623,339	\$ 13,173,154	\$ 13,513,964	\$ 11,390,000

HOUSING FUND

FOR FISCAL YEAR 2026 BUDGET

The Housing Division administers US Department of Housing and Urban Development Community Development Block Grant Funds and Local Bond Funds. The funds are used to develop programs to serve low and moderate-income households. To this end, this fund is responsible for monitoring programs for compliance with local, state, and federal program standards. This fund also provides housing rehabilitation assistance to owner occupants, assistance to nonprofit agencies, down-payment assistance to homebuyers, acquisition and demolition of substandard structures, and program administrative funding.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
CDBG GRANT INCOME	\$ 1,537,283	\$ 1,198,590	\$ 1,088,998	\$ 1,037,668	\$ 1,274,957
HOME GRANT INCOME	125,693	70,233	1,412,216	565,103	161,047
OTHER INCOME	62,576	817,731	5,701,270	2,321,019	164,594
TRANSFER FROM GENERAL FUND	328,695	268,556	357,679	-	375,000
TOTAL	\$ 2,054,247	\$ 2,355,109	\$ 8,560,163	\$ 3,923,790	\$ 1,975,598

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
PERSONNEL	\$ 439,970	\$ 468,258	\$ 296,531	\$ 552,128	\$ 574,214
OPERATING	1,619,548	2,496,272	8,064,770	1,423,470	1,401,384
CAPITAL	-	-	-	-	-
TOTAL	\$ 2,059,518	\$ 2,964,530	\$ 8,361,301	\$ 1,975,598	\$ 1,975,598

*Housing Fund is a multi-year fund

HEALTH FUND

FOR FISCAL YEAR 2026 BUDGET

The Health Fund is used to account for the administration of the City's health insurance program.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
CITY CONTRIBUTION	\$ 11,630,700	\$ 8,773,747	\$ 12,141,320	\$ 11,043,959	\$ 11,582,428
OTHER AGENCIES	872,970	827,762	827,518	1,103,731	1,103,731
RETIREE CONTRIBUTIONS	1,502,000	1,440,314	1,614,872	1,327,544	1,327,544
OTHER REVENUES	146	5,839	1,410	4,246	4,246
INSURANCE COMPANY REFUND/REIMB	3,240	4,835	2,682	240,000	240,000
APPROPRIATED FUND BALANCE	-	-	-	656,888	642,051
TOTAL	\$ 14,009,056	\$ 11,052,497	\$ 14,587,802	\$ 14,376,368	\$ 14,900,000

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
CITY CLAIMS	\$ 11,245,290	\$ 9,753,809	\$ 11,101,111	\$ 12,228,608	\$ 12,228,608
LIBRARY CLAIMS	166,687	140,540	169,198	230,602	230,602
CVA CLAIMS	74,426	51,332	62,575	58,218	58,218
HOUSING AUTHORITY CLAIMS	487,409	449,870	483,848	896,878	896,878
AIRPORT CLAIMS	226,833	208,384	252,740	195,338	195,338
RETIREE CLAIMS	1,327,649	1,313,214	1,393,379	653,383	1,177,015
OTHER EXPENSES	69,640	96,363	112,983	113,341	113,341
TOTAL	\$ 13,597,934	\$ 12,013,512	\$ 13,575,833	\$ 14,376,368	\$ 14,900,000

**VEHICLE REPLACEMENT FUND (VRF)
FOR FISCAL YEAR 2026 BUDGET**

The Vehicle Replacement Fund accounts for monies to fund the City's capital budget, for the replacement of vehicles. All vehicles/equipment maintained by the Fleet Maintenance Division of the Public Works Department are considered under this fund. This fund minimizes fluctuations in the annual budget for vehicle expenditures and establishes a manageable replacement cycle.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
SALE OF PROPERTY	\$ 38,426	\$ 487,832	\$ 596,977	\$ -	\$ -
OTHER REVENUES	-	-	-	-	-
TRANSFER FROM CITY DEPARTMENTS	3,883,115	4,101,077	4,611,732	3,601,408	3,601,408
TRANSFER FROM GENERAL FUND	-	-	-	-	-
TRANSFER FROM SANITATION FUND	-	-	-	-	-
TOTAL	\$ 3,921,541	\$ 4,588,909	\$ 5,208,709	\$ 3,601,408	\$ 3,601,408

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
OPERATING	\$ 1,293,644	\$ (2,593,403)	\$ (1,984,487)	\$ -	\$ -
CAPITAL EQUIPMENT	1,869,625	5,577,489	5,288,909	3,601,408	3,601,408
DEPRECIATION	-	-	-	-	-
TRANSFER TO OTHER FUNDS	-	-	538,670	-	-
TOTAL	\$ 3,163,269	\$ 2,984,087	\$ 3,843,091	\$ 3,601,408	\$ 3,601,408

**FACILITIES IMPROVEMENT FUND (FIP)
FOR FISCAL YEAR 2026 BUDGET**

The Facilities Improvement Fund accounts for monies to fund deferred maintenance projects as outlined in the City's 10 Year Facilities Improvement Plan. The projects funded include facility operations projects that are overseen by the Public Works department as well as Parks and Recreation improvement projects that are overseen by the Parks and Recreation department. The fund was created back in fiscal year 2014-2015 through a \$0.01 increase in the ad valorem property tax rate. The fund receives funding through transfers from the General Fund in an amount needed to fund the annual budgeted projects.

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
TRANSFER FROM GENERAL FUND	\$ 1,280,000	\$ 1,200,000	\$ 1,565,000	\$ 1,200,000	\$ 1,200,000
TRANSFER FROM CAPITAL RESERVE	-	-	-	-	-
TRANSFER FROM OTHER FUNDS	100,000	-	-	-	-
MISCELLANEOUS REVENUE	-	-	43,500	-	-
TOTAL	\$ 1,380,000	\$ 1,200,000	\$ 1,608,500	\$ 1,200,000	\$ 1,200,000

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
CAPITAL IMPROVEMENT	\$ 1,206,867	\$ 1,161,178	\$ 1,433,534	\$ 1,200,000	\$ 1,200,000
OTHER EXPENSES	65,993	28,493	3,432	-	-
TRANSFER TO OTHER FUNDS	-	62,660	110,000	-	-
TOTAL	\$ 1,272,859	\$ 1,189,671	\$ 1,436,966	\$ 1,200,000	\$ 1,200,000

OCCUPANCY TAX FUND FOR FISCAL YEAR 2026 BUDGET

The Occupancy Tax Fund accounts for monies derived from the gross receipts of the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, or similar place. The Room Occupancy Tax also applies to rooms or houses rented by individuals through websites including, but not limited to, Airbnb, VRBO, Windu, Roorama, etc. The tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent or religious organizations when furnished to further their nonprofit purpose or to accommodations furnished to the same person for at least ninety (90) consecutive days.

REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ACTUAL*	2026 PROPOSED
OCCUPANCY TAX	648,613	829,872	939,196	(1,277,647)	750,000
APPROPRIATED FUND BALANCE	-	-	-	-	-
TRANSFER FROM OTHER FUNDS				375,000	
TOTAL	\$ 648,613	\$ 829,872	\$ 939,196	\$ (902,647)	\$ 750,000

EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ACTUAL*	2026 PROPOSED
OPERATING	434,744	336,675	314,030	20,907	750,000
CAPITAL IMPROVEMENT	-	-	-	2,583,427	-
TRANSFER TO OTHER FUNDS	100,000	40,000	822,900	-	-
TOTAL	\$ 534,744	\$ 376,675	\$ 1,136,930	\$ 2,604,334	\$ 750,000

*Occupancy Tax was previously a Life-to-Date Multi-Year fund. Beginning FY 26, it will be an annually budgeted fund

CAPITAL RESERVE FUND FOR FISCAL YEAR 2026 BUDGET

Capital Reserve Fund is a fund established to set aside and appropriate current funding to future capital. Routinely, the Council has transferred unassigned fund balance from the General Fund above the 25% Balance policy into the Capital Reserve Fund to fund specifically identified projects as approved by C

SUMMARY OF REVENUES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL
INVESTMENT EARNINGS	\$ 1,919	\$ 64,700	\$ 85,884	\$ -
RESTRICTED INTERGOVERNMENTAL	-	-	5,000,000	-
TRANSFER FROM GENERAL FUND	-	-	-	-
APPROPRIATED FUND BALANCE	-	-	-	-
TOTAL	\$ 1,919	\$ 64,700	\$ 5,085,884	\$ -

SUMMARY OF EXPENSES	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL
TRANSFER TO GENERAL FUND	\$ 605,587	\$ -	\$ -	\$ -
TRANSFER TO CAPITAL PROJECT FUND	-	1,250,000	-	-
TRANSFER TO FACILITIES IMPROVEMENT	140,487	-	-	-
TRANSFER TO DICKINSON PARKING	-	-	-	-
INCREASE IN RESERVE	-	-	-	-
TOTAL	\$ 746,074	\$ 1,250,000	\$ -	\$ -

**GENERAL FUND
REVENUE DETAIL**

REVENUE SOURCE	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
UNRESTRICTED INTERGOVERNMENTAL					
PROPERTY TAXES					
CURRENT YEAR TAXES	\$ 33,794,616	\$ 34,836,080	\$ 35,952,253	\$ 39,574,142	\$ 42,571,660
MOTOR VEHICLE TAXES	4,057,732	449,659	4,622,492	4,508,862	4,508,862
PRIOR YEAR TAXES	114,265	95,774	128,042	-	-
TAX INTEREST & PENALTIES	134,251	153,186	175,884	141,000	141,000
TAX DISCOUNTS	(499,299)	(518,479)	(529,475)	(462,000)	(462,000)
TAX REFUNDS	(156,320)	(76,449)	(145,327)	(94,000)	(94,000)
SUBTOTAL	\$ 37,445,245	\$ 34,939,772	\$ 40,203,869	\$ 43,668,004	\$ 46,665,522
OTHER UNRESTRICTED GOVERNMENTAL					
SALES TAXES	\$ 27,248,610	\$ 29,595,763	\$ 30,471,404	\$ 31,930,000	\$ 30,512,904
RENTAL VEHICLE - GROSS RECEIPTS	228,982	254,647	265,037	177,000	177,000
VIDEO PROGRAM & SUPPLEMENTAL PEG	730,647	704,599	651,093	704,948	704,948
MOTOR VEHICLE FEE	1,675,940	1,704,390	1,689,920	1,706,000	1,803,631
PAYMENT IN LIEU OF TAXES	72,115	68,896	206,515	65,000	65,000
STATE FIRE PROTECTION	390,076	385,477	383,113	390,000	390,000
UTILITIES FRANCHISE TAX	6,625,128	6,920,722	7,069,447	6,900,000	7,492,757
BEER & WINE	354,087	419,924	454,829	450,000	450,000
SUBTOTAL	\$ 37,325,584	\$ 40,054,417	\$ 41,191,358	\$ 42,322,948	\$ 41,596,240
RESTRICTED INTERGOVERNMENTAL					
TRAFFIC CONTROL LIGHTS MAINTENANCE	\$ 187,151	\$ 217,693	\$ 217,693	\$ 218,000	\$ 218,000
OTHER RESTRICTED INTERGOVERNMENTAL	51,692	25,780	45,100	25,000	25,000
POWELL BILL STATE ALLOCATION	2,390,611	2,424,387	2,676,328	2,400,000	2,960,000
SECTION 104 F PLANNING GRANT MPO	168,307	279,935	364,537	314,944	286,000
SUBTOTAL	\$ 2,797,761	\$ 2,947,795	\$ 3,303,657	\$ 2,957,944	\$ 3,489,000
LICENSES, PERMITS & FEES					
INSPECTION DIVISION PERMITS	1,623,624	1,848,571	2,836,812	1,750,000	-
PLANNING FEES	181,325	202,410	183,134	140,000	145,675
RECREATION DEPARTMENT ACTIVITY FEES	1,255,366	1,343,420	1,503,218	1,500,000	1,500,000
POLICE FEES	1,687,661	1,861,215	1,870,848	2,025,300	2,347,524
ENGINEERING FEES	41,047	71,335	43,565	27,500	44,500
FIRE/RESCUE FEES	262,286	259,944	368,910	230,000	230,000
SUBTOTAL	\$ 5,051,308	\$ 5,586,895	\$ 6,806,487	\$ 5,672,800	\$ 4,267,699
SALES & SERVICES					
RESCUE SERVICE TRANSPORT	\$ 3,990,787	\$ 4,167,213	\$ 3,978,823	\$ 3,500,000	\$ 4,758,234
LEASED PARKING & METERS	325,496	341,705	371,087	446,300	291,713
PARKING VIOLATIONS	193,831	255,444	240,116	275,000	333,287
SUBTOTAL	\$ 4,510,114	\$ 4,764,363	\$ 4,590,025	\$ 4,221,300	\$ 5,383,234
OTHER REVENUES					
SALE OF PROPERTY	\$ -	\$ -	\$ -	\$ -	-
OTHER REVENUES	1,731,924	6,021,507	1,547,715	932,008	2,435,419
SUBTOTAL	\$ 1,731,924	\$ 6,021,507	\$ 1,547,715	\$ 932,008	\$ 2,435,419

**GENERAL FUND
REVENUE DETAIL**

REVENUE SOURCE	2022 ACTUAL	2023 ACTUAL	2024 ACTUAL	2025 ORIGINAL	2026 PROPOSED
INVESTMENT EARNINGS					
INVESTMENT EARNINGS	\$ (1,006,916)	\$ 3,249,487	\$ 5,313,318	\$ 3,600,000	\$ 4,723,564
OTHER FINANCING SOURCES					
TRANSFER IN GUC	\$ 6,746,792	\$ 7,134,995	\$ 8,307,658	\$ 8,694,000	\$ 9,053,691
TRANSFER FROM HOUSING	-	-	-	-	-
TRANSFER FROM SANITATION	-	-	-	-	-
TRANSFER FROM STORMWATER	-	-	-	-	-
OTHER TRANSFERS	117,823	-	179,671	-	-
SUBTOTAL	\$ 6,864,614	\$ 7,134,995	\$ 8,487,329	\$ 8,694,000	\$ 9,053,691
FUND BALANCE APPROPRIATED					
APPROPRIATED FUND BALANCE - GENERAL	-	-	-	750,000	1,250,000
APPROPRIATED FUND BALANCE - POWELL BILL	-	-	-	-	-
SUBTOTAL	\$ -	\$ -	\$ -	\$ 750,000	\$ 1,250,000
GENERAL FUND REVENUE TOTAL	\$ 94,719,635	\$ 104,699,230	\$ 111,443,758	\$ 112,819,004	\$ 118,864,369



City of Greenville, North Carolina

Meeting Date: 05/05/2025

Title of Item:

Budget Ordinance Amendment #10 Amending the 2024-25 City of Greenville Budget (Ordinance #24-038), Facilities Improvement Fund (Ordinance #24-038), Recreation & Parks Capital Projects Fund (Ordinance #17-024), IT Capital Projects Fund (Ordinance #17-024), Capital Reserve Fund (Ordinance #24-038), Enterprise Capital Projects Fund (Ordinance #17-024), Public Works Capital Projects Fund (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-018), and Special Revenue Grant Fund (Ordinance #11-003).

Explanation:

Attached for consideration at the May 5, 2025 City Council meeting is Budget Ordinance Amendment #10 Amending the 2024-25 City of Greenville Budget (Ordinance #24-038), Facilities Improvement Fund (Ordinance #24-038), Recreation & Parks Capital Projects Fund (Ordinance #17-024), IT Capital Projects Fund (Ordinance #17-024), Capital Reserve Fund (Ordinance #24-038), Enterprise Capital Projects Fund (Ordinance #17-024), Public Works Capital Projects Fund (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-018), and Special Revenue Grant Fund (Ordinance #11-003).

For ease of reference, a footnote has been added to each line item of the Budget Ordinance Amendment, which corresponds to the explanation below:

<u>Item</u>	<u>Justification</u>	<u>Funds Amended</u>	<u>Net Adjustment</u>
A	Reclassify General funding based on year-to-date operations.	General Fund	\$0
B	Recognize Interest of Investments for the purposes of allocating funds to various departments for continued operations.	General Fund	865,000
C	Appropriation of Capital Reserve Fund Balance and issuance of debt for the Town Common Bulkhead Project.	Capital Reserve Fund	(5,000,000)
		Recreation & Parks Capital Projects Fund	19,000,000

D	Transfer of funds for the purposes of a Cemetery Software Project.	General Fund	(75,000)
		IT Capital Projects Fund	75,000
E	Closing out various projects and to transfer remaining available funds for the purposes of facilities improvements.	Facilities Improvement Fund	30,384
			(339,616)
		Recreation & Parks Capital Projects Fund	(147,935)
F	Closeout of Recreation & Parks project and transfer remaining funds for the purposes for facilities improvements.	Grants Special Revenue Fund	
			(34,612)
		General Fund	34,612
G	Recognition of grant funds for the St. Andrews Streambank Project.	Facilities Improvement Fund	
		Enterprise Capital Projects Fund	360,614
H	To establish the Safe Streets for All project funded grants, NCDOT, and the City	Public Works Capital Projects Fund	0
		Engineering Capital Projects Fund	500,000

Fiscal Note:

The Budget Ordinance Amendment affects the following funds:

<u>Fund</u>	<u>2024-25 Revised Budget</u>	<u>Amendment #10</u>	<u>2024-25 Budget per Amend #10</u>
General	\$118,551,013	\$865,000	\$119,416,013
Debt Service	7,368,819	-	7,368,819
Public Transportation (Transit)	8,709,256	-	8,709,256
Fleet Maintenance	6,880,638	-	6,880,638
Sanitation	12,746,961	-	12,746,961
Stormwater	13,918,081	-	13,918,081
Inspections	1,750,000	-	1,750,000
Housing	3,352,357	-	3,352,357
Health Insurance	14,521,684	-	14,521,684
Vehicle Replacement	8,647,410	-	8,647,410
Facilities Improvement	2,001,915	64,996	2,066,911
Special Revenue Grants	19,892,699	(147,935)	19,744,764
Public Works Capital Projects	43,128,246	-	43,128,246
Recreation & Parks Capital Projects	14,877,262	18,660,384	33,537,646

Community Development Capital Projects	19,820,634	-	19,820,634
Occupancy Tax	4,699,328	-	4,699,328
Engineering Capital Projects	65,895,525	500,000	66,395,525
Fire/Rescue Capital Projects	12,317,183	-	12,317,183
Capital Project Management Fund	660,000	-	660,000
Donations	601,986	-	601,986
Enterprise Capital Projects	37,273,567	360,614	37,634,181
IT Capital Projects Fund	3,745,991	75,000	3,820,991
Capital Reserve Fund	0	5,000,000	5,000,000
Pitt-Greenville Convention and Visitors Authority (CVA)	2,177,542	-	2,177,542
Opioid Settlement Fund	500,877	-	500,877

Recommendation: Approve Budget Ordinance Amendment #10 Amending the 2024-25 City of Greenville Budget (Ordinance #24-038), Facilities Improvement Fund (Ordinance #24-038), Recreation & Parks Capital Projects Fund (Ordinance #17-024), IT Capital Projects Fund (Ordinance #17-024), Capital Reserve Fund (Ordinance #24-038), Enterprise Capital Projects Fund (Ordinance #17-024), Public Works Capital Projects Fund (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-018), and Special Revenue Grant Fund (Ordinance #11-003).

ATTACHMENTS

☐ [BA25-10.pdf](#)

**ORDINANCE NO.25-
CITY OF GREENVILLE, NORTH CAROLINA**

Ordinance (#10) Amending the 2024-25 Budget (Ordinance #24-038), Facilities Improvement Fund (Ordinance #24-038), Recreation & Parks Capital Project Fund (Ordinance #17-024), IT Capital Projects Fund (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-018) Capital Reserve Fund (Ordinance #24-038), Enterprise Capital Projects Fund (Ordinance #17-024), Engineering Capital Project Fund (Ordinance #17-024), & Special Revenue Grant Fund (Ordinance #11-003).

THE CITY COUNCIL OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section I: Estimated Revenues and Appropriations. General Fund, of Ordinance #24-038 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

Budget Amendment #10								
	2024-25 Revised Budget	A.	B.	D.	F.	Total Amend #10	2024-25 Budget per Amend #10	
ESTIMATED REVENUES								
Property Tax	\$ 45,068,004	-	-	-	-	-	\$ 45,068,004	
Sales Tax	31,630,000	-	-	-	-	-	31,630,000	
Video Prog. & Telecom. Service Tax	650,000	-	-	-	-	-	650,000	
Rental Vehicle Gross Receipts	177,000	-	-	-	-	-	177,000	
Utilities Franchise Tax	6,900,000	-	-	-	-	-	6,900,000	
Motor Vehicle Tax	1,706,000	-	-	-	-	-	1,706,000	
Other Unrestricted Intergov't	905,000	-	-	-	-	-	905,000	
Powell Bill	2,400,000	-	-	-	-	-	2,400,000	
Restricted Intergov't Revenues	619,000	-	-	-	-	-	619,000	
Licenses, Permits and Fees	3,795,000	-	-	-	-	-	3,795,000	
Rescue Service Transport	3,839,000	-	-	-	-	-	3,839,000	
Parking Violation Penalties, Leases,	625,000	-	-	-	-	-	625,000	
Other Revenues	1,325,222	-	-	-	-	-	1,325,222	
Interest on Investments	4,891,953	-	865,000	-	-	865,000	5,756,953	
Transfers In GUC	8,694,000	-	-	-	-	-	8,694,000	
Transfers from Other Funds	265,000	-	-	-	-	-	265,000	
Appropriated Fund Balance	5,060,834	-	-	-	-	-	5,060,834	
Total Revenues	\$ 118,551,013	-	865,000	-	-	865,000	\$ 119,416,013	
APPROPRIATIONS								
Mayor/City Council	\$ 617,501	(89,909)	-	-	-	(89,909)	\$ 527,592	
City Manager	3,983,624	89,909	-	-	-	89,909	4,073,533	
City Clerk	440,055	-	-	-	-	-	440,055	
City Attorney	850,639	-	35,000	-	-	35,000	885,639	
Human Resources	3,961,805	-	-	-	-	-	3,961,805	
Information Technology	4,789,723	-	-	-	-	-	4,789,723	
Engineering	6,756,241	-	-	-	-	-	6,756,241	
Fire/Rescue	21,228,610	-	700,000	-	-	700,000	21,928,610	
Financial Services	4,214,165	-	-	-	-	-	4,214,165	
Recreation & Parks	9,946,709	-	-	-	-	-	9,946,709	
Police	33,715,397	-	130,000	-	-	130,000	33,845,397	
Public Works	9,111,875	-	-	(75,000)	-	(75,000)	9,036,875	
Planning & Development	1,710,075	-	-	-	-	-	1,710,075	
Project Management	1,020,000	-	-	-	(34,612)	(34,612)	985,388	
Neighborhood & Business Services	2,217,482	-	-	-	-	-	2,217,482	
OPEB	700,000	-	-	-	-	-	700,000	
Contingency	27,000	-	-	-	-	-	27,000	
Indirect Cost Reimbursement	(1,950,887)	-	-	-	-	-	(1,950,887)	
Total Appropriations	\$ 103,340,015	\$ -	\$ 865,000	\$ (75,000)	\$ (34,612)	\$ 755,388	\$ 104,095,403	
OTHER FINANCING SOURCES								
Transfers to Other Funds	\$ 15,210,998	\$ -	\$ -	\$ 75,000	\$ 34,612	\$ 109,612	\$ 15,320,610	
Total Other Financing Sources	\$ 15,210,998	\$ -	\$ -	\$ 75,000	\$ 34,612	\$ 109,612	\$ 15,320,610	
Total Approp & Other Fin Sources	\$ 118,551,013	\$ -	\$ 865,000	\$ -	\$ -	\$ 865,000	\$ 119,416,013	

Section II: Estimated Revenues and Appropriations. Facilities Improvement Fund, of Ordinance #24-038 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	E.	F.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES					
Transfer from General Fund	\$ 1,200,000	\$ -	\$ 34,612	\$ 34,612	\$ 1,234,612
Transfer from Sanitation	75,000	-	-	-	75,000
Transfer from Other Funds	-	30,384	-	30,384	30,384
Appropriated Fund Balance	726,915	-	-	-	726,915
Total Revenues	\$ 2,001,915	\$ 30,384	\$ 34,612	\$ 64,996	\$ 2,066,911
APPROPRIATIONS					
Facilities Improvement Fund	\$ 2,001,915	\$ 30,384	\$ 34,612	\$ 64,996	\$ 2,066,911
Total Appropriations	\$ 2,001,915	\$ 30,384	\$ 34,612	\$ 64,996	\$ 2,066,911

Section III: Estimated Revenues and Appropriations. Recreation & Parks Capital Project Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	C.	E.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES					
Restricted Intergovernmental	\$ 1,622,457	\$ -	\$ -	\$ -	\$ 1,622,457
Transfer from General Fund	3,837,669	-	(339,616)	(339,616)	3,498,053
Transfer from Capital Reserve	128,822	5,000,000	-	5,000,000	5,128,822
Transfer from CD Cap Proj Fund	82,965	-	-	-	82,965
Transfer from FIP	154,818	-	-	-	154,818
Transfer from FEMA-Hurricane	317,340	-	-	-	317,340
Transfer from PW Cap Proj Fund	74,870	-	-	-	74,870
Transfer from Occupancy Tax Reserve	617,900	-	-	-	617,900
Special Donations	2,082,755	-	-	-	2,082,755
Miscellaneous Revenue	567,148	-	-	-	567,148
Appropriated Fund Balance	971,573	-	-	-	971,573
Long Term Financing	4,418,945	14,000,000	-	14,000,000	18,418,945
Total Revenues	\$ 14,877,262	\$ 19,000,000	\$ (339,616)	\$ 18,660,384	\$ 33,537,646
APPROPRIATIONS					
Water Sports Facility Project	\$ 306,325	\$ -	\$ -	\$ -	\$ 306,325
Wildwood Park	11,191,321	-	-	-	11,191,321
Transfer to General Fund	9,000	-	-	-	9,000
Parks Improvements	45,000	-	(45,000)	(45,000)	-
Off-Lease Dog Park	100,000	-	(100,000)	(100,000)	-
Parks Comprehensive Master Plan	147,000	-	(147,000)	(147,000)	-
Pickleball Conversion	75,000	-	(75,000)	(75,000)	-
Sports Complex Feasibility Study	117,900	-	-	-	117,900
Guy Smith Improvements	1,051,403	-	-	-	1,051,403
Greenfield Terrace	766,361	-	-	-	766,361
Elm Street Improvements	44,870	-	-	-	44,870
NC PARTF - Woodlawn Park	600,000	-	-	-	600,000
Town Common Bulkhead Project	-	19,000,000	-	19,000,000	19,000,000
Transfer to Other Funds	423,082	-	27,384	27,384	450,466
Total Appropriations	\$ 14,877,262	\$ 19,000,000	\$ (339,616)	\$ 18,660,384	\$ 33,537,646

Section IV: Estimated Revenues and Appropriations. IT Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	D.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES				
Transfers from Other Funds	\$ 3,745,991	\$ 75,000	\$ 75,000	\$ 3,820,991
Total Revenues	<u>\$ 3,745,991</u>	<u>\$ 75,000</u>	<u>\$ 75,000</u>	<u>\$ 3,820,991</u>
APPROPRIATIONS				
Transfer to Other Funds	\$ 2,500,000	\$ -	\$ -	\$ 2,500,000
IT Hardware Upgrade	1,245,991	-	-	1,245,991
Cemetery Software	-	75,000	\$ 75,000	75,000
Total Appropriations	<u>\$ 3,745,991</u>	<u>\$ 75,000</u>	<u>\$ 75,000</u>	<u>\$ 3,820,991</u>

Section V: Estimated Revenues and Appropriations. Capital Reserve Fund, of Ordinance #24-038 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Original Budget	C.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES				
Transfers from General Fund	\$ -	\$ -	\$ -	\$ -
Appropriated Fund Balance	-	5,000,000	5,000,000	5,000,000
Total Revenues	<u>\$ -</u>	<u>\$ 5,000,000</u>	<u>\$ 5,000,000</u>	<u>\$ 5,000,000</u>
APPROPRIATIONS				
Increase in Reserve	\$ -	\$ -	\$ -	\$ -
Transfer to Recreation & Parks Capital Projects	-	5,000,000	5,000,000	5,000,000
Transfer to Engineering Capital Projects	-	-	-	-
Total Appropriations	<u>\$ -</u>	<u>\$ 5,000,000</u>	<u>\$ 5,000,000</u>	<u>\$ 5,000,000</u>

Section VI: Estimated Revenues and Appropriations. Enterprise Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	G.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES				
Spec Fed/State/Local Grants	\$ 14,654,096	\$ 360,614	\$ 360,614	\$ 15,014,710
Transfer from Other Funds	13,122,811	-	-	13,122,811
Appropriated Fund Balance	9,496,660	-	-	9,496,660
Total Revenues	<u>\$ 37,273,567</u>	<u>\$ 360,614</u>	<u>\$ 360,614</u>	<u>\$ 37,634,181</u>
APPROPRIATIONS				
South Elm Culvert Replacement	\$ 8,651,963	\$ -	\$ -	\$ 8,651,963
Cedar Greenbriar	1,240,000	-	-	1,240,000
St. Andrews Streambank	627,879	360,614	360,614	988,493
Corey Road Detention	8,051,454	-	-	8,051,454
East Firetower Road	18,702,271	-	-	18,702,271
Total Appropriations	<u>\$ 37,273,567</u>	<u>\$ 360,614</u>	<u>\$ 360,614</u>	<u>\$ 37,634,181</u>

Section VII: Estimated Revenues and Appropriations. Public Works Capital Project Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	H.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES				
Occupancy Tax	\$ 422,610	\$ -	\$ -	\$ 422,610
Transfers from Other Funds	24,699,878	-	-	24,699,878
Other Income	2,731,245	-	-	2,731,245
Spec Fed/State/Loc Grant	5,137,777	-	-	5,137,777
Long Term Financing	7,950,000	-	-	7,950,000
Appropriated Fund Balance	2,186,736	-	-	2,186,736
Total Revenues	\$ 43,128,246	\$ -	\$ -	\$ 43,128,246
APPROPRIATIONS				
Stantonsburg Rd./10th St Con Project	\$ 7,191,050	\$ -	\$ -	\$ 7,191,050
Streets Modular Buildings	750,000	-	-	750,000
Sidewalk Development Project	791,287	-	-	791,287
Gateway Sign Project	350,000	-	-	350,000
Energy Efficiency Project	777,600	-	-	777,600
Energy Savings Equipment Project	2,591,373	-	-	2,591,373
Convention Center Expansion Project	4,718,000	-	-	4,718,000
Pedestrian Improvement Project	210,761	-	-	210,761
Street Lights & Cameras	2,701,225	(50,000)	(50,000)	2,651,225
F/R Station 3 Parking Lot	139,551	-	-	139,551
F/R Station 2 Bay Expansion	244,655	-	-	244,655
Parking Lot Enhancements	4,866	-	-	4,866
Street Improvements Project	13,032,297	-	-	13,032,297
Safe Routes to School	1,409,463	-	-	1,409,463
Imperial Demolition	238,464	-	-	238,464
Parking Deck Safety Improvements	180,000	-	-	180,000
Emerald Loop Lighting Upgrades	200,000	-	-	200,000
CVA - Pedestrian Mall Renovation	326,042	-	-	326,042
Pipe Improvement Project	1,750,000	-	-	1,750,000
Transfer to Other Funds	3,257,374	50,000	50,000	3,307,374
Transfer to General Fund	636,801	-	-	636,801
Transfer to Street Improvement	1,002,567	-	-	1,002,567
Transfer to Recreation & Parks Capital	74,870	-	-	74,870
Transfer to Facilities Improvement	300,000	-	-	300,000
Transfer to IT Capital Projects Fund	250,000	-	-	250,000
Total Appropriations	\$ 43,128,246	\$ -	\$ -	\$ 43,128,246

Section VIII: Estimated Revenues and Appropriations. Engineering Capital Projects Fund, of Ordinance #20-019 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	H.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 18,400,000	\$ 400,000	\$ 400,000	\$ 18,800,000
Restricted Intergovernmental - NCDOT	190,000	50,000	50,000	240,000
Transfer from ARPA Fund	9,813,000	-	-	9,813,000
Transfer from Capital Reserve	3,266,882	-	-	3,266,882
Transfer from Street Improvement Bond Fund	4,180,921	-	-	4,180,921
Transfer from Other Funds	3,043,261	50,000	50,000	3,093,261
Other In-kind Contributions	1,150,000	-	-	1,150,000
Transfer from General Fund	11,776,368	-	-	11,776,368
Transfer from Stormwater Utility	4,000,000	-	-	4,000,000
Sale of Property	1,433,040	-	-	1,433,040
Long Term Financing	8,642,053	-	-	8,642,053
Total Revenues	\$ 65,895,525	\$ 500,000	\$ 500,000	\$ 66,395,525
APPROPRIATIONS				
BUILD	\$ 48,956,506	\$ -	\$ -	\$ 48,956,506
Pavement Management Program	9,980,508	-	-	9,980,508
Employee Parking Lot	1,302,840	-	-	1,302,840
Ficklen Street Improvements	240,000	-	-	240,000
Dickinson Avenue Improvements	1,250,000	-	-	1,250,000
Mast Arm Project	45,000	-	-	45,000
4th Street Project	1,125,000	-	-	1,125,000
Traffic Safety Improvements	56,000	-	-	56,000
Arts District	885,000	-	-	885,000
North South Connector	1,500,000	-	-	1,500,000
ADA	-	-	-	-
Pavement Conditions	375,000	-	-	375,000
Safe Streets For All	-	500,000	500,000	500,000
Transfer to General Fund	179,671	-	-	179,671
Total Appropriations	\$ 65,895,525	\$ 500,000	\$ 500,000	\$ 66,395,525

Section IX: Estimated Revenues and Appropriations. Special Revenue Grant Fund, of Ordinance #11-003 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2024-25 Revised Budget	E.	Total Amend #10	2024-25 Budget per Amend #10
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 16,154,942	\$ (88,275)	\$ (88,275)	\$ 16,066,667
CARES Act Funding	1,526,923	-	-	1,526,923
Transfer From General Fund	1,812,627	-	-	1,812,627
Transfer From Pre-1994 Entitlement	27,419	-	-	27,419
Transfer from Other Funds	107,895	(59,660)	(59,660)	48,235
Other Income	262,893	-	-	262,893
Total Revenues	\$ 19,892,699	\$ (147,935)	\$ (147,935)	\$ 19,744,764
APPROPRIATIONS				
Personnel	\$ 2,319,850	\$ -	\$ -	\$ 2,319,850
Operating	6,584,568	-	-	6,584,568
Capital Outlay	2,006,385	-	-	2,006,385
Transfers	27,419	3,000	3,000	30,419
COVID-19	1,526,923	-	-	1,526,923
Rural Housing Recovery Grant	350,000	-	-	350,000
Environmental Enhancement Grant	150,935	(150,935)	(150,935)	-
STAR Grant	330,000	-	-	330,000
Governor's Crime Commission Grant 22	24,500	-	-	24,500
Governor's Crime Commission Grant 23	22,900	-	-	22,900
COPS Community Policing Development	175,000	-	-	175,000
Justice Assistance Grant 2022	55,135	-	-	55,135
Justice Assistance Grant 2023	53,522	-	-	53,522
Justice Assistance Grant 2024	46,731	-	-	46,731
Project Lucky - Job Creation Grant	100,000	-	-	100,000
Energy Efficient Conservation Block Grant	146,850	-	-	146,850
Assistance to Fire Fighters Grant	404,438	-	-	404,438
USAR	94,000	-	-	94,000
Body Worn Cameras	1,400,000	-	-	1,400,000
Transfer to Other Funds	1,375,877	-	-	1,375,877
Boviet Solar Economic Development	2,666,666	-	-	2,666,666
Governor's Highway Safety Program	31,000	-	-	31,000
Total Appropriations	\$ 19,892,699	\$ (147,935)	\$ (147,935)	\$ 19,744,764

Section X: All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed:

Adopted this 5th day of May, 2025

P. J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk