

REBID FOR:

PROJECT MANUAL

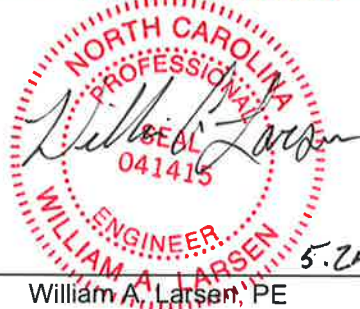
FOR

**FEMA 428 – Public Beach Access Walkway Project
Town of Emerald Isle
CARTERET COUNTY, NORTH CAROLINA**

TWC Project Number: 3496-A

MAY 2024

**FINAL SPECIFICATIONS
RELEASED FOR CONSTRUCTION**



William A. Larsen, PE

Wooten

301 Wet 14th Street
Greenville, NC 27834
(252) 757-1096
License Number: F-0115

CERTIFICATION PAGE

A. Project Bidding and Contracting

I, William A. Larsen, P.E., hereby certify that the Bidding Requirements, Contracting Requirements, and Division 3 of the FEMA 428 – Public Beach Access Walkway Project, Project Manual were prepared by me or under my direct supervision.



B. Structural Engineering Design

I, William Dzurick, P.E., hereby certify that the Plans and Details of the FEMA 428 – Public Beach Access Walkway Project, Project Manual were prepared by me or under my direct supervision.



FIRM REGISTRATION C-4878

END OF DOCUMENT

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END OF DOCUMENT

BIDDING REQUIREMENTS

RE-ADVERTISEMENT FOR BIDS

Project: FEMA 428 – Public Access Walkway Project

Owner: Town of Emerald Isle
7500 Emerald Drive
Emerald Isle, NC 28594

Engineer: The Wooten Company
301 West 14th Street
Greenville, NC 27834
(252) 757-1096

Separate sealed Bids will be received until 2:00 pm, Tuesday June 25th, 2024, in the Town of Emerald Isle Town Meeting Center at 7500 Emerald Drive, Emerald Isle, N.C., at which time and place bids will be publicly opened and read aloud for the construction of the Public Access Walkway Project.

After Bids are opened, the Owner shall evaluate them in accordance with the methods and criteria set forth in the Instructions to Bidders. The Owner reserves the right to waive any informality or to reject any or all Bids. Unless all Bids are rejected, Award will be evaluated based on price for each walkway and/or combination of walkways, taking into consideration quality, performance and the time specified in the proposals for the performance of the Contract.

A non-mandatory pre-bid meeting will be held on Tuesday June 4th, 2024 at 2:00 PM in the Town of Emerald Isle Town Meeting Center at 7500 Emerald Drive, Emerald Isle, N.C. Questions shall be received no later than 5:00 PM on June 14th, 2024. It is anticipated that if an Addendum is required, it will be released on or before June 18th, 2024.

The Project consists of the following major items:

- The construction of 13 improved public beach accesses and appropriate miscellaneous appurtenances. Owner is providing materials for the project. Bidding will be evaluated based labor and additional charges required to remove and dispose of existing structures and construct new walkways.

Bidding Documents may be examined at Engineer's and Owner's office and at:

- Dodge Company (online)
- Construct Connect (online)
- North Carolina Bid Network (online)

Complete Bidding Documents may be obtained electronically from the Issuing Office of the Engineer. Paper copies are available only by request.

With request for Bidding Documents supply the following information: Company name, contact person, street address, and phone and fax numbers for Bidding office; N.C. contractor's license with limitation and classification; indicate if the firm will be a Bidder, Supplier or Sub-Contractor.

Bidders will be required to show evidence that they are licensed to perform the work in the Bidding Documents as required by North Carolina General Statute, Chapter 87 and the Instructions to Bidders.

Bid Security in the amount of five percent of the Bid must accompany each Bid and shall be subject to the conditions provided in the Instructions to Bidders.

END OF DOCUMENT

INSTRUCTIONS TO BIDDERS

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ARTICLE 1 DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

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

ARTICLE 2 COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents in the number and for the amount stated in the Advertisement for Bids may be obtained from the Issuing Office as identified in the advertisement. The deposit/fee will be refunded in accordance with the conditions indicated in the Advertisement for Bids.

2.02 Complete set of Bidding Documents must be used in preparing bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete set of Bidding Documents.

- 2.03 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 MINORITY PARTICIPATION GOALS

- 3.01 Bidders must make positive efforts to utilize minority businesses. The Owner has developed a goal of ten percent (10%) for participation of minority business enterprises in construction contracts awarded pursuant to NCGS 143-128.2.
- 3.02 Bidder shall be required to submit identification of firms and Affidavits as required in the Bid Form.

ARTICLE 4 QUALIFICATIONS OF BIDDERS

- 4.01 Bidders are notified that Chapter 87, Article 1 of the General Statutes of North Carolina, will be observed in receiving and awarding contracts. Bidders for this Project must be licensed in the following classifications and limitations:
- A. General: Must have a General Contractors license with one of the following classifications with a limitation appropriate to the bid amount.
 - 1. Classifications:
 - a. Intermediate or Unclassified
 - b. Building
 - 2. Limitations:
 - a. "Limited": Up to \$750,000
 - b. "Intermediate": Up to \$1,500,000
 - c. "Unlimited": No limit on contract value
- 4.02 To demonstrate Bidder's qualifications to perform the Work prior to award, within five (5) days of Owner's request, Bidder shall submit written evidence which shall include, but not be limited to, the following:
- A. Official name of Bidder and length of time the organization has been in business under present name.
 - B. Address, phone and fax numbers of main place of business. Address and phone numbers of company office that will manage the Project if different than above.
 - C. Officers of the company. Name and resume of designated project manager and field superintendent. Number of regular employees of the organization.
 - D. Latest financial statement showing assets and liabilities of the company.
 - E. Name and home office address of the Surety proposed and the name and address of the responsible local claim agent.
 - F. Listing completed projects of similar size and type. Provide name and phone number of project owner representative.
 - G. Existing work commitments.
 - H. List of work to be subcontracted. Name and addresses of subcontractors.
 - I. Names and addresses of major material Suppliers.
 - J. Statement that bidder is capable of completing the project within the stated time.

- K. The apparent Low Bidder shall submit within 72 hours of the Bid Date the following Affidavits:
 - 1. Affidavit C, Portion of the Work to be Performed by Minority Firms.
 - 2. Affidavit D, Good Faith Efforts
- 4.03 Any additional submittals required with the General Conditions, Supplementary Conditions, or the State and Federal Special Conditions shall be submitted within the stated timeframes and on the supplied forms, where available.
- 4.04 Failure or refusal to furnish information requested shall constitute a basis for disqualification of Bidder and the withholding of the Bid Bond.

ARTICLE 5 EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

5.01 Subsurface and Physical Conditions

- A. The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.
 - 2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in Paragraph 5.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

5.02 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

- 5.03 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 4.06 of the General Conditions.

- 5.04 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 5.05 Additional Owner Provided Information:
- A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.
 - B. Additional reference is made to the Federal Provisions provided in the Contracting Section.**
- 5.06 It is the responsibility of each Bidder before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;
 - B. Visit the Site and become familiar with and satisfy Bidder as to the general, local and Site conditions that may affect cost, progress, and performance of the Work;
 - C. Become familiar with and satisfy Bidder as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work;
 - D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Condition at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions;
 - E. Obtain and carefully study (or assume responsibility for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 - F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and

within the times and in accordance with the other terms and conditions of the Bidding Documents;

- G. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 5.07 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.
- 5.08 After Bids have been submitted, Bidder shall not assert that there was a misunderstanding concerning the quantities of Work or of the nature of Work to be done.
- 5.09 Bidding Documents contain the provisions required for construction of the Project. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks or obligations assumed by the Bidder or relieve him from fulfilling the conditions of the contract.
- 5.10 Failure or omission of Bidder to do the foregoing shall in no way relieve Bidder from the obligations in respect to his Bid.

ARTICLE 6 PRE-BID CONFERENCE

- 6.01 Pre-Bid Conference will be held on Tuesday June 4th, 2024 at 2:00 PM in the Town of Emerald Isle Town Meeting Center at 7500 Emerald Drive, Emerald Isle, N.C.

ARTICLE 7 SITE AND OTHER AREAS

- 7.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. Additional lands and access thereto required for temporary construction facilities,

construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 8 INTERPRETATIONS AND ADDENDA

8.01 Questions shall be received no later than 5:00 PM on June 14th, 2024 in the manner described below. It is anticipated that if an Addendum is required, it will be released on or before June 18th, 2024.

8.02 Questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Questions may be e-mailed. Questions will not be taken by phone. E-mail address is wlarsen@thewootencompany.com.

8.03 Submittal with questions shall include the project name, the person's name submitting the question, firm, telephone number, fax number and e-mail when available.

8.04 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to parties recorded by Engineer as having received the Bidding Documents. Questions received less than five working days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other written interpretations or clarifications will be without legal effect.

8.05 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

8.06 The project was previously bid on April 30th, 2024. Since that time, the scope of the project remains the same but with different conditions as outlined within this document. Below are questions and responses provided from the first bid that are pertinent to this contract:

1) How many accesses are exempt from CAMA regulations?

12 of the 13 accesses are exempt and Town is handling the permit for the 13th access

2) Who is responsible for paying the County permitting fees?

Contractor

3) Can equipment/materials be stored/stockpiled on the dunes?

No, nothing to be stored or stockpiled on the dunes

4) Is this like-for-like replacement of all existing material at the sites?

Locations and overall length of the walkways will remain consistent. The materials and standards of construction are to follow the contract. Howe Street access is the most recent access replaced will serve as a model.

5) What are the Town requirements for the sites during construction?

Must have Porta John on site and beach access closed signs must be placed on street and ocean side of the access during construction.

6) Can contractors bid on individual bid form groups or must bid on all of them?

Contractors may bid on any individual access or all.

7) What type of equipment can be used for this replacement/kept on site?

Specific equipment for construction is at the Contractor discretion provided equipment can be fully contained to the site and will not create any damage or impact to the integrity of the dunes.

- 8) Is there access to a water supply on any of the sites?

No. Contractor to arrange supply and accessibility.

- 9) How are pilings to be dug out for replacement/to what depth are new pilings to be dug?

Equipment can be used provided no damage or negative impacts to the integrity of the dunes is created. 5 foot burial depth.

- 10) Can ThruFlow or Sunwalk decking be used?

Decking shall be Sure Step decking to remain in conformity with the Howe Street walkway and provide conformance amongst all award scenarios within this contract.

- 11) With existing walkways being 4 feet wide, can it be assumed contractors are adding 1 foot to each side for the new walkway width?

Each site/scenario will be specific to its unique conditions.

- 12) Will a registered land surveyor be required at each location for staking since the new walkways are larger?

All walkways are contained in publicly held easements. Any construction staking needs will be the responsibility of the Contractor.

- 13) Clarification is needed on bench locations for each access.

Benches and framing for bench supports are to be constructed on the seaward side of each access. Town staff and Engineer are available during construction for specific questions regarding locations.

- 14) Are contractors required to remove old material every day from the site?

Yes, all old material must be removed from the site each day of construction

- 15) Project duration ?

Please refer to Section 00520. Overall construction window is set between 9/9/2024 through 4/15/2025.

- 16) Liquidated damages ?

\$750.00 per day per walkway.

- 17) All wood decking to be Ocean side only ?

Decking material is anticipated to be consistent throughout walkway (stairs and walkway).

- 18) Clarify minor demolition expected per specs.

Existing structures shall be removed and replaced fully. Care shall be taken to protect surrounding structures/features.

19) Assume central location for temp facilities? Expected requirement.

Please refer to Section 01500. No office requirement. Specific requirements will be dependent on Award scenario and selected Contractor.

20) Builders Risk insurance by Owner or Contractor?

Contractor

ARTICLE 9 BID SECURITY

- 9.01 Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond (on the form attached) issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions.
- 9.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and provide the required contract security within 10 days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or the end of the Bid holding period as indicated in the Bid Form, whereupon Bid security furnished by such Bidders will be returned.
- 9.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 10 CONTRACT TIMES

- 10.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement. The potential impacts from the project should be noted and understood by the Contractor with care taken to complete the tasks within the allotted Contract Times provided.

ARTICLE 11 LIQUIDATED DAMAGES

- 11.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 12 SUBSTITUTE AND OR-EQUAL ITEMS

- 12.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or-equal" materials and equipment as defined in paragraph 6.05 of the General Conditions, or those substitute materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or or-equal item. Request for Engineer's clarification of materials and equipment considered or-equal prior to the Effective Date of the Agreement must be received by the Engineer at least 5 days prior to the date for receipt of Bids. No item of material or equipment will be considered by Engineer

as a substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each request shall conform to the requirements of paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon the Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 13 SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 13.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or others to be submitted to Owner in advance of a specified date prior to the Notice of Award, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of such Subcontractors, Suppliers, and others proposed for those portions of the Work for which such identification is required. An experience statement shall accompany such list with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, and others if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, or others, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.
- 13.02 If apparent Successful Bidder declines to make any such substitution, Owner may determine such Bidder to be non-responsive, reject the Bid, and award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Subcontractor, Supplier, or others so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06 of the General Conditions.
- 13.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.
- 13.04 The Contractor shall not award work to Subcontractor(s) in excess of the limits stated in SC 6.06.

ARTICLE 14 PREPARATION OF BID

- 14.01 The Bid form is included with the Bidding Documents. Additional copies may be obtained from Engineer.
- 14.02 Bids must be made on required Bid Form. Blanks on the Bid Form shall be completed by printing in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid Price shall be indicated for each item listed therein, or the words "No Bid," "No Change," or "Not Applicable" entered. Unsigned modifications to Bid Form may cause Bid to be rejected.
- 14.03 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid form. It is the bidder's responsibility to confirm the final number of addendums with Engineer prior to submitting the bid.

- 14.04 The postal and email addresses and telephone number for communication regarding the Bid shall be shown.
- 14.05 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state or locality where the Project is located. Bidder's state contractor license number shall also be shown on the Bid form.
- 14.06 Bid Form shall be executed as follows:
- A. Sole Owner: Evidenced by word "owner" appearing after the name of the person-executing document.
 - B. Partnership: Executed in the partnership name and signed by a partner, whose title shall appear under the signature, accompanied by evidence of authority to sign.
 - C. Corporation: Executed in the corporate name by the president or vice-president or other corporate officer accompanied by evidence of authority to sign. Corporate seal shall be affixed and attested by secretary or assistant secretary and the title of the office of such person shall appear after their signatures.
 - D. Joint Venture: Executed by each member of the Joint Venture in the above form for sole owner, partnership, or corporation, whichever form is applicable.
 - E. Limited Liability Company: Executed in the name of the firm by a member and accompanied by evidence of authority to sign.
 - F. Signatures shall be signed in ink and properly witnessed.
 - G. Names shall be typed or printed in ink below the signatures.
 - H. Official mailing address of owner, partnership, corporation, or joint venture shall be shown below the signature.
- 14.07 Bidder shall complete the form, Identification of Minority Business Participation, identifying the minority businesses that will be utilized on the project with corresponding total dollar value and Affidavit A, Listing of Good Faith Efforts, or Affidavit B, Intent to Perform Contract with own Workforce, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f). Failure to comply with these requirements is grounds for rejection of the bid.

ARTICLE 15 SUBMITTAL OF BID

- 15.01 The Owner, at the location and time indicated in the Advertisement for Bids, will receive sealed Bids. Bids received after the indicated time and date shall not be considered.
- 15.02 Bid form is to be completed and submitted with all the attachments outlined in Article 7 of the Bid Form, including the E-Verify Affidavit. The complete list of required bid documents can also be found in the attached Bidder's Checklist. The checklist shall be the first page of all bids submitted.
- 15.03 Submit Bid in an opaque sealed envelope plainly marked on the outside with the following:
- Bid for FEMA 428 – Public Access Walkway Project**
 - Bidder's name and address**
 - N.C. Contractor's license number with classification and limitation**

- 15.04 If forwarded by mail or other delivery system, enclose sealed envelope containing Bid and information listed above in another envelope with notation "BID ENCLOSED" and addressed to:

**Town of Emerald Isle
7500 Emerald Drive
Emerald Isle, N. C. 28594**

When using the mail or other delivery system, the Bidder is totally responsible for the mail or other delivery system delivering the Bid at the place and prior to the time indicated in the Advertisement for Bid.

ARTICLE 16 MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Modifications shall indicate only the amount to be added to or deducted from the Bidder's Bid amount as submitted on the Bid Form.
- 16.02 No Bid may be withdrawn after the Bid opening for a period of time as indicated in the Bid Form except in accordance with the provisions of N. C. General Statutes 143-129.1.

ARTICLE 17 OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Advertisement for Bids and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 Bids will remain subject to acceptance for the period of time stated in the Bid form, but Owner may, at its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 BASIS OF BID; COMPARISON OF BIDS

- 19.01 Unit Price
- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
 - B. The total of all bid prices will be determined as the sum of the products of the estimated quantity of each item and the corresponding unit price bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.
 - C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

ARTICLE 20 EVALUATION OF BIDS AND AWARD OF CONTRACT

- 20.01 It is the intent of the Owner to review the bids received in accordance with the available grouping of improvements as described in the Bid Form. Based on the

results of the bidding process, the Owner may elect to award a single, multiple or all groupings of improvements to a Contractor based on the total group bid or cumulative total project bid. If the results of the individual groupings results in different low bidders, the Owner may utilize this Contract to award the work based on the respective grouping(s) to its respective Contractor.

- 20.02 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, non-responsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsive. Owner also reserves the right to waive informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 20.03 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of Bids in which that Bidder has an interest.
- 20.04 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 20.05 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 20.06 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the contract Documents.
- 20.07 In determining the lowest responsible Bidder, Owner shall take into consideration the past performance of Bidder on construction contracts with particular concern given to completion times, quality of work, cooperation with other contractors, and cooperation with owner.
- 20.08 In determining the responsive Bidder, Owner shall take into consideration bidder's compliance with the requirements of G.S. 143-128.2(c). Failure of the low bidder to furnish affidavit(s) and documentation as required by the Bid Form for compliance with G.S. 143-128.2(c) may constitute a basis for disqualification of the Bid.
- 20.09 Owner reserves the right to reject Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy Owner that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the Work described therein.
- 20.10 Should the Owner adjudge that the apparent low Bidder is not the lowest responsible Bidder by virtue of the above information, said apparent low Bidder will be so notified and his Bid security shall be returned.

ARTICLE 21 CONTRACT SECURITY AND INSURANCE

- 21.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to Performance Bond, Payment Bond, and other Bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by such Bonds.

ARTICLE 22 SIGNING OF AGREEMENT

- 22.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other contract Documents which are identified in the Agreement as attached thereto. Within 10 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement, Bonds, Insurance, and other documents to Owner. Within 10 days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.
- 22.02 In case of failure of Bidder to execute the Agreement, Owner may at his option consider Bidder in default, in which case Bid Bond accompanying Bid shall become the property of the Owner.
- 22.03 Applicable laws, ordinances, and the rules and regulations of authorities having jurisdiction over construction of the Project shall apply to the contract throughout.

END OF DOCUMENT

BID FORM

PROJECT: FEMA 428 – Public Beach Access Walkway Project

BID FROM: _____

TABLE OF ARTICLES

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Article 8 – Defined Terms	7
Article 9 – Bid Submittal	7

ARTICLE 1 BID RECIPIENT

1.01 This Bid is Submitted To:

Town of Emerald Isle
7500 Emerald Drive
Emerald Isle, NC 28594

1.02 Undersigned bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner in the form included in the Bidding Documents to perform the Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in the Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

Addenda _____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to federal, state and local Laws and Regulations that may affect cost, progress, and performance, of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02, and (2) reports and drawings of Hazardous Environmental Conditions, if any, that have been identified in SC-4.06 as containing reliable "technical data".
- E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

- A. For Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated below.

Walkways (In Order of Preference)					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Total Estimated Price
1	Conch Court (6' by 132')	LS	1		
2	Sea Crest Interior (6' by 375')	LS	1		
3	Elizabeth Street (6' by 230')	LS	1		
4	Lee Street (6' by 145')	LS	1		
5	10 th Street (6' by 55')	LS	1		
6	Ocean Crest (6' by 220')	LS	1		
7	Janell Street (6' by 50')	LS	1		
8	Hurst Street (6' by 220')	LS	1		
9	3113 Ocean (6' by 260')	LS	1		
10	22 nd Street (6' by 60')	LS	1		
11*	Eagles Nest (6' by 250')	LS	1		
12*	15 th Street (6' by 60')	LS	1		
13*	19 th Street (6' by 150')	LS	1		

*Alternatives: If funds allow, these units may be replaced as well.

- B. Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.
- C. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents. Determinations of actual quantities and classification are to be made by Engineer as provided in paragraph 9.07 of the General Conditions.

ARTICLE 6 TIME OF COMPLETION

6.01 Bidder agrees that the Work will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 ATTACHMENTS TO THIS BID

7.01 The following documents are attached to and made a condition of this Bid. Failure to provide the documentation with the bid may be grounds for rejection of the bid.

- A. Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided).
- B. In accordance with GS 143-128.2(c), Bidder shall identify on its bid the minority businesses that it will use on the project and the total dollar value of the bid that will be performed by the minority businesses and list the good faith efforts (Affidavit A) made to solicit participation. A Bidder that will perform all of the work with its own workforce may submit an Affidavit (B) to that effect in lieu of the affidavit (A) required above.
 - 1. Identification of Minority Business Participation.
 - 2. Affidavit A, Listing of Good Faith Efforts
 - 3. Affidavit B, Intent to Perform Contract with Own Workforce.

7.02 After the bid opening the Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low Bidder, the Bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

- A. An Affidavit (C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the goal established by the Owner and indicated in the Instruction to Bidders, paragraph Minority Participation Goals. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort; or
- B. Affidavit (D) of its good faith effort to meet the goal. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

7.03 In accordance with GS 143-128 the Single Prime Contractor must identify the Contractors, if any, selected for the following subdivision of work:

A. General Construction

Name: _____

Address: _____

N.C. License No.: _____

7.04 Bidder understands that if this Bid is accepted by the Owner, Bidder shall not substitute for the subcontractors named in the Bid Documents except as allowed in the Supplementary Conditions.

ARTICLE 8 DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 BID SUBMITTAL

9.01 Contractor's License

A. Number: _____

B. Classification: _____

C. Limitation: _____

Employer's Tax ID No.: _____

Business Address

Phone No.: _____

Fax No.: _____

E-Mail Address: _____

9.02 This Bid Submitted by:

An Individual

Name: _____
(Type or print)

By: _____
(Individual's Signature)

Doing Business As: _____
(Type or print)

A Partnership

Partnership Name: _____

The Organization and Internal Affairs of the Partnership are governed by the laws
of the State of: _____

By: _____
(Signature of general partner, attach evidence of authority to sign)

Name: _____
(Type or print)

Title: _____
(Type or print)

Attest: _____
(Signature of Corporate Secretary)

A Corporation

Corporation Name: _____

State of Incorporation: _____

Type (General Business, Profession, Service, Limited Liability):

By: _____
(Signature, attach evidence of authority to sign)

Name: _____
(Type or print)

Title: _____
(Type or print)

Attest: _____ Corporate Seal
(Signature of Corporate Secretary)

Date of Qualification to do business in North Carolina is _____.

Limited Liability Company – LLC

Name of LLC: _____

Name of State under whose Laws the Limited Liability Company
was formed: _____

By: _____
(Signature of Manager)

Name: _____
(Type or print)

Title: _____
(Type or print)

END OF DOCUMENT

BIDDER'S CHECKLIST

This checklist shall be included as the first page of the submitted bidding documents. As outlined in article 7 of the Bid Form the following items shall be included with the submitted bidding documents:

	A.	Properly Executed Bid Form (Including the acknowledgement of all Addenda)
	B.	Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided); Bid Bond shall include an executed Power of Attorney.
	C.	Identification of Minority Business Participation
	D.	Affidavit A, Listing of Good Faith Efforts; or Affidavit B, Intent to Perform Contract with Own Workforce
	E.	Guidelines for Recruitment and Selection of Minority Business
	F.	E-Verify Affidavit

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name and Address of Principal Place of Business*):

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name and Include Location*):

BOND

Bond Number:

Date (*Not earlier than Bid due date*):

Penal sum <div style="text-align: center; margin-top: 5px;">(Words)</div>	\$ <div style="text-align: center; margin-top: 5px;">(Figures)</div>
--	---

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

 Bidder's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name _____

Print Name _____

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Above addresses are to be used for giving required notice.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

PAGE FOR ATTACHING
POWER OF ATTORNEY
(Bid Bond)

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

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

MBForms 2002-R

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

County of _____

(Name of Bidder)

Affidavit of _____

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

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

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

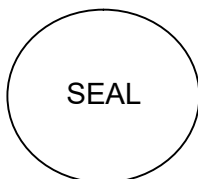
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure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

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

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

County of _____

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____
_____ contract.
(Name of Project)

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

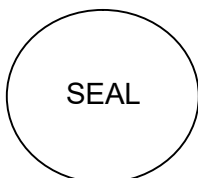
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OR MUNICIPALITY

I, _____ (the individual attesting below), being duly authorized by and on behalf of _____ (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
 - a. YES _____, or
 - b. NO _____
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This _____ day of _____, 20__.

Signature of Affiant

Print or Type Name: _____

State of North Carolina County of _____

Signed and sworn to (or affirmed) before me, this the _____
day of _____, 20__.

My Commission Expires:

Notary Public

(Affix Official / Notarial Seal)

ADDENDUM

FEMA 428 – PUBLIC BEACH ACCESS WALKWAY PROJECT
EMERALD ISLE, NORTH CAROLINA

SUBJECT: ADDENDUM NO. 1

JUNE 20, 2024

To the Plans and Specifications for:
FEMA 428-Public Beach Access Walkway Project
Emerald Isle, North Carolina

To: PROSPECTIVE BIDDERS AND OTHER CONCERNED PARTIES

This ADDENDUM forms a part of the Contract Documents and modifies the original Bidding Documents as noted below. Bidders shall acknowledge receipt of the ADDENDUM in the space provided on the Bid Form. Failure to do so may subject the Bidder to Disqualification.

A. Contracting Requirements

1. Section 00010, Table of Contents
 - a. Add Addendum No. 1 reference after Section 00432.
2. Section 00410, Bid Form
 - a. Replace Section 00410 dated 05/24/24 with Section 00410 dated 06/19/24.
3. Section 00410a, Bidders Checklist
 - a. Replace Section 00410a dated 09/19/23 with Section 00410a dated 06/19/24.

B. Technical Requirements

1. Section 02370 Erosion Control
 - a. ~~Remove Sub-Section 3.04.~~

C. Non- Mandatory Pre-Bid Meeting Agenda

1. Attached herein.

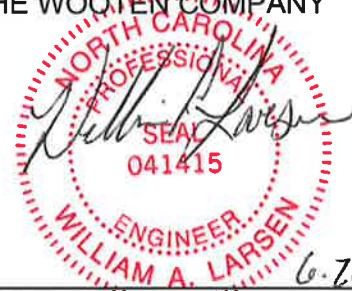
D. Contractor/Supplier questions and responses.

1. Specification section 00200-8.06-a states "12 of the 13 accesses are exempt and Town is handling the permit for the 13th access". When is the permit for the 13th access expected.
Following CAMA timelines the Town will secure the permit prior to the commencement of work.
2. Specification section 01270-1.04-C states "Raw materials are to be purchased by Owner." Does the term "raw materials" include lumber, pickets, bearboard, sure step decking, and fasteners?
Correct. All materials required to construct the walkways will be supplied. Exception to statement are items related to erosion control measures utilized by Contractor.
3. Specification section 01270-1.04-C states "Contractor is responsible for coordination and pick/delivery from supplier." What is the location of the "Supplier"?
Town is soliciting bids separately from material supplier(s) and will provide location(s) after the material bidding is complete. Bids are being solicited from suppliers within reasonable proximity to the Town.
4. What lengths of lumber will be provided?
12'

5. Specification section 02370-3.01-A states "Install erosion control devices, which shall be in place and operational prior to other land disturbing activity." In the absence of an erosion control plan, will silt fence around the work area satisfy this requirement?
This is has been a typical practice in related Town projects. Specific means and methods are dependent on the selected Contractor(s) and the specific access locations.
6. Specification section 02370-3.04-B states "Provide temporary and permanent seeding in accordance with Section, Lawns and Grasses." Please provide this section.
The Lawns and Grasses reference was an extraneous note and has been removed from the requirements of the Contract.
7. Please clarify the quantity of the H3SS clips required at each end of each joist as indicated in detail 201/S.1.
One H3SS is required at each end and at each girder if continuous over more than one span.
8. Please clarify the diameter of the SDWS timer screws as indicated in detail 202/S.1.
0.22".
9. Is there a detail for the construction of the benches? If not, can one be provided?
There is no detail for the benches. Benches will be purchased separately
10. Provide clarification on the location to terminate the stairs on the beach side. Match existing or actual sand elevation.
Sand elevation at time of walkway replacement.
11. Can existing topography be modified within the 6' corridor of the walkway.
No. Per CAMA, sites are not allowed to be modified.
12. Will Town be responsible for silt fencing/construction fencing.
No. Contractor will be responsible for providing and installing silt and/or construction fencing. Fencing and walkway closure signage shall be fully installed prior to the start of demolition activities.
13. Responsibility for obtaining coordination of County permit.
Contractor
14. Will weekend and extended hours be allowed.
Work hours are allowed from 8AM until Dark. Preference of the Town is to maintain work within week days. Specific request for weekend work will be reviewed by Town staff on an as needed basis.
15. Availability of material quantity estimates.
Town is soliciting bids separately from material supplier(s) and will provide location(s) and quantities after the material bidding is complete.
16. Will a time extension be allowed for the Seacrest walkway.
Yes, the Town will allow 45 days for the Seacrest walkway and 30 for all others.
17. Can excess sand from piling excavations be removed from site.
No, sand can not be removed from the site. Rake out excess sand within the project area.

Bids will be received until 2:00 PM, Tuesday June 25, 2024.

FOR THE OWNER
THE WOOTEN COMPANY



BY

William A. Larsen, PE

6-20-2024

END OF DOCUMENT

BID FORM

PROJECT: FEMA 428 – Public Beach Access Walkway Project

BID FROM: _____

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ARTICLE 1 BID RECIPIENT

1.01 This Bid is Submitted To:

Town of Emerald Isle
7500 Emerald Drive
Emerald Isle, NC 28594

1.02 Undersigned bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner in the form included in the Bidding Documents to perform the Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in the Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

Addenda _____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to federal, state and local Laws and Regulations that may affect cost, progress, and performance, of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02, and (2) reports and drawings of Hazardous Environmental Conditions, if any, that have been identified in SC-4.06 as containing reliable "technical data".
- E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

- A. For Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated below.

Walkways (In Order of Preference)					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Total Estimated Price
1	Conch Court (6' by 132')	LS	1		
2	Sea Crest Interior (6' by 375')	LS	1		
3	Elizabeth Street (6' by 230')	LS	1		
4	Lee Street (6' by 145')	LS	1		
5	10 th Street (6' by 124')	LS	1		
6	Ocean Crest (6' by 220')	LS	1		
7	Janell Street (6' by 50')	LS	1		
8	Hurst Street (6' by 220')	LS	1		
9	3113 Ocean (6' by 260')	LS	1		
10	22 nd Street (6' by 198')	LS	1		
11*	Eagles Nest (6' by 250')	LS	1		
12*	15 th Street (6' by 150')	LS	1		
13*	19 th Street (6' by 150')	LS	1		

*Alternatives: If funds allow, these units may be replaced as well.

- B. Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.
- C. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents. Determinations of actual quantities and classification are to be made by Engineer as provided in paragraph 9.07 of the General Conditions.

ARTICLE 6 TIME OF COMPLETION

6.01 Bidder agrees that the Work will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 ATTACHMENTS TO THIS BID

7.01 The following documents are attached to and made a condition of this Bid. Failure to provide the documentation with the bid may be grounds for rejection of the bid.

- A. Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided).
- B. In accordance with GS 143-128.2(c), Bidder shall identify on its bid the minority businesses that it will use on the project and the total dollar value of the bid that will be performed by the minority businesses and list the good faith efforts (Affidavit A) made to solicit participation. A Bidder that will perform all of the work with its own workforce may submit an Affidavit (B) to that effect in lieu of the affidavit (A) required above.
 - 1. Identification of Minority Business Participation.
 - 2. Affidavit A, Listing of Good Faith Efforts
 - 3. Affidavit B, Intent to Perform Contract with Own Workforce.

7.02 After the bid opening the Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low Bidder, the Bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

- A. An Affidavit (C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the goal established by the Owner and indicated in the Instruction to Bidders, paragraph Minority Participation Goals. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort; or
- B. Affidavit (D) of its good faith effort to meet the goal. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

7.03 In accordance with GS 143-128 the Single Prime Contractor must identify the Contractors, if any, selected for the following subdivision of work:

A. General Construction

Name: _____

Address: _____

N.C. License No.: _____

7.04 Bidder understands that if this Bid is accepted by the Owner, Bidder shall not substitute for the subcontractors named in the Bid Documents except as allowed in the Supplementary Conditions.

ARTICLE 8 DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 BID SUBMITTAL

9.01 Contractor's License

A. Number: _____

B. Classification: _____

C. Limitation: _____

Employer's Tax ID No.: _____

Business Address

Phone No.: _____

Fax No.: _____

E-Mail Address: _____

9.02 This Bid Submitted by:

An Individual

Name: _____
(Type or print)

By: _____
(Individual's Signature)

Doing Business As: _____
(Type or print)

A Partnership

Partnership Name: _____

The Organization and Internal Affairs of the Partnership are governed by the laws
of the State of: _____

By: _____
(Signature of general partner, attach evidence of authority to sign)

Name: _____
(Type or print)

Title: _____
(Type or print)

Attest: _____
(Signature of Corporate Secretary)

A Corporation

Corporation Name: _____

State of Incorporation: _____

Type (General Business, Profession, Service, Limited Liability):

By: _____
(Signature, attach evidence of authority to sign)

Name: _____
(Type or print)

Title: _____
(Type or print)

Attest: _____ Corporate Seal
(Signature of Corporate Secretary)

Date of Qualification to do business in North Carolina is _____.

Limited Liability Company – LLC

Name of LLC: _____

Name of State under whose Laws the Limited Liability Company
was formed: _____

By: _____
(Signature of Manager)

Name: _____
(Type or print)

Title: _____
(Type or print)

END OF DOCUMENT

BIDDER'S CHECKLIST

This checklist shall be included as the first page of the submitted bidding documents. As outlined in article 7 of the Bid Form the following items shall be included with the submitted bidding documents:

	A.	Properly Executed Bid Form (Including the acknowledgement of all Addenda)
	B.	Required Bid security in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided); Bid Bond shall include an executed Power of Attorney.
	C.	Identification of Minority Business Participation
	D.	Affidavit A, Listing of Good Faith Efforts; or Affidavit B, Intent to Perform Contract with Own Workforce
	E.	E-Verify Affidavit

Pre-Bid Meeting

Rebid for: FEMA 428 – Public Beach Access Walkway Project Emerald Isle, North Carolina

June 4, 2024: 2:00 PM
Emerald Isle Town Meeting Center
7500 Emerald Dr, Emerald Isle, NC 28594

1. INTRODUCTION

- **Attendance Sheet**
- **Town Comments**
- **Bid Deadline**

June 25, 2024: 2:00 PM
Town of Emerald Isle – Town Meeting Center
7500 Emerald Dr, Emerald Isle, NC 28594
Email: wlarsen@thewootencompany.com

2. PROJECT OVERVIEW:

The project scope will include:

- Construction of 13 improved public beach accesses.
- Bidding has been revised to bid on each access.

- Walkway piling are required to be 5' deep
- Piling will be 6' apart
- Machines/equipment are allowed
- All materials provided by Town
 - No benches
 - No concrete sidewalk

3. Funding of Project:

- a) FEMA

4. GENERAL:

- a) Project Schedule:
 - i) Contract Time: 30 Calendar Days per walkway;
 - ii) Note project window: September 9th, 2024 through April 15th, 2025
 - iii) Final Completion means all closeout documentation submitted;

- b) Coordination
 - i) Town to provide all materials for the project.
 - ii) Coordination with Town Staff is required to minimize operational impacts;
 - iii) In accordance with specifications, permits, encroachment agreements, and regulatory requirements;
- c) Addendum
 - i) No addenda at this time;

5. QUESTIONS

- i) Must be submitted in writing prior to June 14th, 2024.
- ii) Only items specifically addressed by addendum are binding.

6. OPEN FORUM

7. CLOSING REMARKS

CONTRACT REQUIREMENTS

Notice of Award



Project: FEMA 428 – Public Beach Access Walkway Project	Date:
Owner: Town of Emerald Isle	Owner's Contract No.:
Contract:	Engineer's Project No.: 3496-A
Bidder:	
Bidder's Address: (send Certified Mail, Return Receipt Requested)	
, NC	

You are notified that your Bid dated _____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for the following:

FEMA 428 – Public Beach Access Walkway Project

The Contract Price of your Contract is _____ Dollars (\$_____).

4 copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within 10 days of the date you receive this Notice of Award.

1. Deliver to the Owner 5 fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract Bonds as specified in the Instructions to Bidders, General Conditions Paragraph 5.01, and Supplementary Conditions Paragraph SC-5.01.
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

Town of Emerald Isle
Owner
By: _____
Authorized Signature

Title

Copy to Engineer

Acceptance of Notice

Receipt of the above Notice of Award is hereby acknowledged by _____

this the _____ day of _____, 20____.

By: _____

Title: _____

AGREEMENT

THIS AGREEMENT is by and between _____
Town of Emerald Isle (Owner) and
_____ (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

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

- The replacement of up to 13 new public beach accesses and appropriate miscellaneous appurtenances.

ARTICLE 2 - PROJECT

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

FEMA 428 – Public Beach Access Walkway Project

ARTICLE 3- ENGINEER

The Project has been designed by The Wooten Company, 301 West 14th Street, Greenville, North Carolina 27834, (Engineer) which is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

- A. All time limits for Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Completion and Final Payment

- A. **Regardless of the number of Walkways awarded to a Contractor, the available construction window to commence and complete all will include but not extent beyond the window of September 9th, 2024 through April 15th, 2025.** The available days as described below shall fall within this described window of availability.
- B. **The Work associated with each walkway shall be completed within 30 calendar days.** This includes, but is not limited to, mobilization, demolition, removal of existing materials, delivery of new materials, construction of walkway, site cleanup, and release for use to the Town.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof

allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by 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), **Contractor shall pay Owner \$750.00 for each day per walkway** that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$750.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the following paragraphs:

All specific allowances are included in the above price in accordance with paragraph 11.02 of the General Conditions.

- A. For the following Walkways as selected by the Owner for inclusion in the Project as follows:

Conch Court	Included_____	Not Included_____	\$
Sea Crest (Int.)	Included_____	Not Included_____	\$
Elizabeth Street	Included_____	Not Included_____	\$
Lee Street	Included_____	Not Included_____	\$
10 th Street	Included_____	Not Included_____	\$
Ocean Crest	Included_____	Not Included_____	\$
Janell Street	Included_____	Not Included_____	\$
Hurst Street	Included_____	Not Included_____	\$
3113 Ocean	Included_____	Not Included_____	\$
22 nd Street	Included_____	Not Included_____	\$
Eagles Nest	Included_____	Not Included_____	\$

15 th Street	Included_____	Not Included_____	\$
19 th Street	Included_____	Not Included_____	\$

- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Bid Form.

Total of all Unit Prices: _____
Dollars (\$) _____)

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

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Engineer will process Applications for Payment as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 25th day of each month during performance of the Work as provided in paragraphs 6.02.A.1 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage as indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine, or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.
 - a. 95 % of Work completed (with the balance being retainage); and
 - b. 95 % of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to the Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

- 7.01 7.01 Once a Progress or Final Payment Application has been submitted by the contractor, recommended by the Engineer, and Approved by the Owner, if payment is not made, the Contractor will be due interest beginning on the 46th day following Owner acceptance at a rate of 1% per month or fraction thereof in accordance with NC

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
 - E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
 - F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other items and conditions of the Contract Documents.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents.

- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 00520-1 to 00520-7)
 - 2. Performance Bond (pages 00610-1 to 00610-2)
 - 3. Payment Bond (pages 00615-1 to 00615-2)
 - 4. Certificate of Insurance (page 00620-1)
 - 5. General Conditions (pages 00700-1 to 00700-62)
 - 6. Supplementary Conditions (pages 00800-1 to 00800-9)
 - 7. Specifications as listed in the table of contents (pages 00010-1 to 00010-1) of the Project Manual.
 - 8. Drawings consisting of sheets numbered D-1 through D-2 and are not attached to this Agreement, with each sheet bearing the following general title: FEMA 428 – Public Beach Access Walkway.
 - 9. Exhibits to this Agreement as follows:
 - a. Contractor's Bid (pages _____ to _____, inclusive);
 - b. Notice of Award (pages 00510-1)
 - c. Documentation submitted by Contractor prior to Notice of Award.
 - d. Ariel Photos of Beach Accesses
 - 10. The following that may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 00550-1)
 - b. Work Change Directives;
 - c. Change Order;
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

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

10.04 Severability

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

THIS AREA LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in quintuplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer and two counterparts to FEMA. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement will be effective on _____, 2024 (which is the Effective Date of the Agreement).

OWNER:

Town of Emerald Isle
Name

Title

Signature

(SEAL)

CONTRACTOR:

Name

Title

Signature

(SEAL)

ATTEST:

Name

Title

Signature

Name

Title

Signature

Address for giving notices

Town of Emerald Isle

7500 Emerald Drive

Emerald Isle, NC 28594

License No. _____

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

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

END OF DOCUMENT

Notice to Proceed



Project: FEMA 428 – Public Beach Access Walkway Project	Date:
Owner: Town of Emerald Isle	Owner's Contract No.:
Contract:	Engineer's Project No.: 3496-A
Contractor:	
Contractor's Address: (send Certified Mail, Return Receipt Requested)	
, NC	

You are notified that the Contract Times under the above contract will commence to run on _____. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment _____. The date of completion of all work is therefore _____.

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you must deliver to the Owner (with copies to Engineer and other identified additional insureds) certificates of insurance which you are required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must :

Owner – Town of Emerald Isle
Given by:
Authorized Signature

Title

Date

Copy to Engineer

Acceptance of Notice

Receipt of the Notice of Proceed is hereby acknowledged by _____

this the _____ day of _____, 20____.

By: _____

Title: _____

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)

Contractor's Name and Corporate Seal

(seal)

Surety's Name and Corporate Seal

By: _____

Signature

By: _____

Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____

Signature

Attest: _____

Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of

the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years

after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or

(2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond

shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

PAGE FOR ATTACHING

POWER OF ATTORNEY

PAGE FOR ATTACHING
CERTIFICATE OF INSURANCE

Contractor's Application for Payment No.

1

Application Period:		Application Date:	
To (Owner):	From (Contractor):	Via (Engineer): The Wooten Company	
Project:	Contract:		
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:	

Application For Payment Change Order Summary

Approved Change Orders		
Number	Additions	Deductions
TOTALS		
NET CHANGE BY		
CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE.....	\$	_____
2. Net change by Change Orders.....	\$	_____
3. Current Contract Price (Line 1 ± 2).....	\$	_____
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate).....	\$	_____
5. RETAINAGE:		
a. 5% X _____ Work Completed.....	\$	_____
b. 5% X _____ Stored Material.....	\$	_____
c. Total Retainage (Line 5a + Line 5b).....	\$	_____
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c).....	\$	_____
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$	_____
8. AMOUNT DUE THIS APPLICATION.....	\$	_____
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above).....	\$	_____

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By: _____

Date: _____

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____
(Engineer) (Date)

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____
(Owner) (Date)

Approved by: _____
Funding Agency (if applicable) (Date)

Progress Estimate - Lump Sum Work

Contractor's Application

For (Contract):					Application Number: <div>1</div>			
Application Period:					Application Date:			
		B	Work Completed		E	F		G
A		B	C	D	Materials Presently Stored (not in C or D)	Total Completed and Stored to Date (C + D + E)	% (F / B)	Balance to Finish (B - F)
Specification Section No.	Description	Scheduled Value (\$)	From Previous Application (C+D)	This Period				
	Totals							

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract):												Application Number: 1			
Application Period:												Application Date:			
A Contract Items						B Work Completed from Previous Applications		C Work Completed this Application		D Work Completed to Date		E	F		
Item		Bid Item Quantity	Unit	Unit Price	Bid Item Value (\$)	Quantity	Amount	Quantity	Amount	Quantity	Amount	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / A)	Balance to Finish (B - F)
Bid Item No.	Description														
1							\$ -	8	\$ -		\$ -				
2							\$ -		\$ -		\$ -				
3							\$ -	1	\$ -		\$ -				
4							\$ -		\$ -		\$ -				
5							\$ -	1	\$ -		\$ -				
6							\$ -	1	\$ -		\$ -				
7							\$ -		\$ -		\$ -				
8							\$ -		\$ -		\$ -				
9							\$ -		\$ -		\$ -				
10							\$ -		\$ -		\$ -				
11							\$ -		\$ -		\$ -				
12							\$ -		\$ -		\$ -				
13							\$ -		\$ -		\$ -				
14							\$ -		\$ -		\$ -				
15							\$ -		\$ -		\$ -				
16							\$ -		\$ -		\$ -				
17							\$ -		\$ -		\$ -				
18							\$ -		\$ -		\$ -				
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29							\$ -		\$ -		\$ -				

30							\$ -		\$ -		\$ -				
31							\$ -		\$ -		\$ -				
32							\$ -		\$ -		\$ -				
33							\$ -		\$ -		\$ -				
34							\$ -		\$ -		\$ -				
35							\$ -		\$ -		\$ -				
36							\$ -		\$ -		\$ -				
37							\$ -		\$ -		\$ -				
38							\$ -		\$ -		\$ -				
39							\$ -	1	\$ -	1	\$ -				
	Totals						\$ -								

Stored Material Summary

Contractor's Application

[illegible]

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

Instructions

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2. Make sure that you have the correct version for your software.

How to Use:

1. While EJCDC has expended considerable effort to make the software translations exact, it can be that a few document controls (e.g., bold, underline) did not carry over.
2. Similarly, your software may change the font specification if the font is not available in your system. It will choose a font that is close in appearance. In this event, the pagination may not match the control set.
3. If you modify the document, you must follow the instructions in the License Agreement about notification.
4. Also note the instruction in the License Agreement about the EJCDC copyright.

License Agreement

You should carefully read the following terms and conditions before using this document.

Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.

The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.

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You have a limited nonexclusive license to:

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2. Use **EJCDC Design and Construction Related Documents** in printed form for bona fide contract documents.
3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

You agree that you will:

1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.
2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

You may not use, copy, modify, or transfer EJCDC Design and Construction Related Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of EJCDC Design and Construction Related Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited.

If you transfer possession of any copy, modification or merged portion of EJCDC Design and Construction Related Documents to another party, your license is automatically terminated.

Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

Limitations of Remedies:

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of

defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional
Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

NORTH CAROLINA SALES TAX AND USE REPORT
(Paid During This Estimate Period)

PAGE ____ of ____

PROJECT _____ COUNTY _____ ESTIMATE NO. _____
CONTRACTOR _____ PERIOD ENDING _____

DATE	VENDOR NAME	INVOICE NUMBER	INVOICE AMOUNT	TYPE OF PROPERTY	STATE TAX	COUNTY TAX	TOTAL TAX	COUNTY OF SALE*

I certify that the above-listed vendors were paid sales tax upon purchase of building materials during the period covered by the construction estimate, and the property upon which such taxes were paid with or will be used in the performance of this contract. No tax on purchases or rentals of supplies, tools and/or equipment is included in the above list. All of the material above became a part of or is annexed to the building(s) or structure(s) being erected, altered or repaired. I certify that, to the best of my knowledge, the information provided here is true, correct, and complete

Sworn to and subscribed to before me this _____ day of _____, 20____.

Notary Public
My commission expires: _____

Seal

Contractor's Signature

Print or Type Name of Above

*If this is an out-of-state vendor, the County of Sale should be the county to which the merchandise was shipped.

Certificate of Substantial Completion



Project: FEMA 428 – Public Beach Access Walkway Project	
Owner: Town of Emerald Isle	Owner's Contract No.:
Contract:	Engineer's Project No.: 3496-A

This [tentative] [definitive] Certificate of Substantial Completion applies to:

- ☐ All Work under the Contract Documents: ☐ The following specified portions:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [revised tentative] [definitive] list of items to be completed or corrected, is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

- ☐ Amended Responsibilities ☐ Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer

Date

Accepted by Contractor

Date

Accepted by Owner

Date

3496-A : 9/27/2023

00625-1

Certificate of Substantial Completion

EXHIBIT GC-A

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, _____,
the duly authorized and acting legal representative of _____,
do hereby certify as follows:

I have examined the attached Contract(s) and Performance and Payment Bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

Date _____

PRE-AUDIT STATEMENT

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

Town of Emerald Isle, NC

Date: _____

By: _____

Title: _____

AGENCY CONCURRENCE

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

By: _____ Date _____

Type Name: _____

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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *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.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *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.

40. *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.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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.
44. *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.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

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

C. *Day:*

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

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

2.06 *Preconstruction Conference; 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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
2. 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.

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

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

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

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

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

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

consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

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

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. 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 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

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

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

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

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

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

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, 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.

6.08 *Permits*

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

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 claim or action, legal or equitable, brought

by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

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

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings:*

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

2. *Samples:*

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

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

C. *Submittal Procedures:*

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

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

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

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

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

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

6.20 *Indemnification*

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

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

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

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.

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

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If 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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

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

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

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

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

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 Notice of Defects

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

13.02 Access to Work

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

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

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

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

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

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. Applications for Payments:

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations 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 9.07, 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 Documents; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner 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.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. Contractor's repeated disregard of the authority of Engineer; or
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 - 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 - 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 - 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (C-700, 2007 Edition) and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

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ARTICLE SC-1, DEFINITIONS AND TERMINOLOGY

The Specifications are written in imperative mood and streamlined form. This imperative language is directed to the Contractor, unless specifically noted otherwise. The words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

SC-1.01.A.3. Add the following language to the end of Paragraph 1.01.A.3:

The Application for Payment form to be used on this Project is EJCDC No. C-620. Contractor may use their standard computerized forms for providing detail payment breakdown as an attachment to summary sheet. Agency must approve all Applications for Payment before payment is made.

SC-1.01.A.9. Add the following language to the end of Paragraph 1.01.A.9:

The Change Order form to be used on this Project is EJCDC No. C-941. Agency approval is required before Change Orders are effective.

SC-1.01.A.19. Add the following language to the end of Paragraph 1.01.A.19:

The Engineer's Consultants on this project are: Coastal Structural Engineering, PC

Add the following definitions to the General Conditions:

- A.52 The term "minority business" means a business:
- In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- A.53 The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
- Black, that is, a person having origins in any of the black racial groups in Africa;
 - Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - Female.
- A.54 The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637; "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities". "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged."
- A.55 Notice of Violation: A written notification from a governmental agency that the Owner has violated a law or regulation that the agency has jurisdiction over. Notice will take the form used by the agency and may outline action to be taken by the Owner to correct the violation and may include a monetary fine.
- A.56 Regular Working Hours: Regular working hours for the project are defined as 8:00 am to 5:00 pm, Eastern Standard Time unless otherwise agreed to in writing from the Owner.

ARTICLE SC-2, PRELIMINARY MATTERS

- SC-2.02 Delete the word "ten" and insert "five" in its place in paragraph 2.02.
- SC-2.03.A Delete paragraph 2.03.A in its entirety and insert the following in its place:
- 2.03.A The Contract Times will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed will be issued at any time within 30 days after the Effective Date of the Agreement or a date agreed to by the Owner and Contractor.

ARTICLE SC-3, CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01.B Add the following paragraph 3.01.B.1 to the General Conditions:

3.01.B.1 Division 1, General Requirements, govern the execution of the work of all sections of the specifications.

ARTICLE SC-4, AVAILABILITY OF LANDS: SUBSURFACE AND PHYSICAL
CONDITIONS; REFERENCE POINTS

SC 4.01 Add the following paragraph 4.01.D to the General Conditions:

SC 4.02 Delete paragraph 4.02 in its entirety and insert the following in its place:

4.02 No reports or explorations or tests of subsurface conditions at or contiguous to the Site are known to the Owner or Engineer. Contractor shall have full responsibility with respect to subsurface conditions at the site with allowances as provided in the Contract Documents.

SC-4.04.A.2 The following shall be added to paragraph 4.04.A.2:

- e. Contractor shall follow the North Carolina General Statutes, Chapter 87, Article 8 Underground Damage Prevention.
- f. Notifying owners of underground facilities prior to start of Work.
- g. Investigating ahead of the Work to verify the existence of Underground Facilities.
- h. Assuming risks and repairing damage caused by the Work to existing Underground Facilities whether indicated or not in the Contract Documents. Repairs to Underground Facilities shall be done to the satisfaction of the Underground Facility owner and may require material and methods, which are better than the existing Facility. Underground Facility owner reserves the right to repair damage by the Contractor to their underground Facilities. If the Owner exercises this right, the owner's cost of this Work shall be deducted from the money due the Contractor.
- i. Uncovering Underground Facilities, with that owners approval, that are located within the Work as necessary for Engineer to determine the requirements for the change in the work.

SC 4.06 Delete paragraph 4.06.A and 4.06.B in their entirety and insert the following:

- A. No reports or drawings of Hazardous Environmental Conditions at or contiguous to the Site are known to the Owner or Engineer.
- B. Not used.

SC-4.07 Add the following new paragraph after SC-4.06:

SC-4.07 Miscellaneous Site Conditions

- A. The Contractor shall perform video inspections and take photographs of the proposed construction areas before disturbing the site in order to establish an accurate record of the

pre-construction conditions for comparison to the final work. The Contractor shall provide the Owner with copies of all video and photographic records at the appropriate times (i.e., pre-construction and post-construction). The cost of video and photographic work shall be incidental to the contract and no separate payment will be made by the Owner.

ARTICLE SC-5. BONDS AND INSURANCE

SC-5.04 Add the following new paragraphs immediately after paragraph 5.04.B:

C. Limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Worker's Compensation, and related coverage under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

- | | |
|--|--|
| a. State: | Statutory - Per the Workers' Compensation Laws of the State of North Carolina. |
| b. Applicable Federal (e.g., Longshoremen's) | Statutory |
| c. Employers Liability: | \$500,000 |

2. Contractor's General Liability under paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions, which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of the Contractor:

- | | |
|---|----------------|
| a. General Aggregate | \$2,000,000.00 |
| b. Products & Completed Operations Aggregate | \$1,000,000.00 |
| c. Personal & Advertising Injury | \$1,000,000.00 |
| d. Each Occurrence (Bodily Injury & Property Damage) | \$1,000,000.00 |
| e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable. | |
| f. Excess or Umbrella Liability | |
| 1) General Aggregate | \$5,000,000.00 |
| 2) Each Occurrence | \$5,000,000.00 |

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

- | | |
|-----------------------------|-----------------------------------|
| a. Bodily Injury: | |
| Each person | \$1,000,000.00 |
| Each Accident | \$1,000,000.00 |
| b. Property Damage: | |
| Each Accident | \$1,000,000.00 |
| | OR (i.e., either a. and b. or c.) |
| c. Combined Single Limit of | \$1,000,000.00 |

4. The Contractual Liability coverage required by Paragraph 5.04.B.3 of the General Conditions shall provide coverage for not less than the following amounts:

- | | |
|---------------------|----------------|
| a. Bodily Injury: | |
| Each person | \$2,000,000.00 |
| Each Accident | \$2,000,000.00 |
| b. Property Damage: | |
| Each Accident | \$2,000,000.00 |
| Annual Aggregate | \$2,000,000.00 |

SC-5.06.A Add the following paragraphs after 5.06.A.7.

8. include a waiver of occupancy clause endorsement, which will enable the Owner to occupy the facility under construction / renovation during such activity.
9. be responsible for deductible or self-insured retention.
10. when a contract includes the installation of equipment into an existing structure, the above policy shall include an "Installation Floater" endorsement covering same. This includes installation and transit.
11. name Owner as insured in the policy.

ARTICLE SC-6, CONTRACTOR'S RESPONSIBILITIES

SC-6.02 Add the following paragraphs after 6.02.B:

- C. Overtime Work: If Contractor's Work requires inspection as determined by the Engineer more than 10 hours in a work day or 40 hours in a work week, Monday through Friday excluding holidays, or on the weekends he shall submit a written request to the Engineer five (5) working days prior to the scheduled Work. Contractor shall pay for the Resident Project Representative's time beyond the above hours at the rate of \$114.00 / hour.
- D. The above will not prevent the Contractor from working outside the above time that will not require the inspector to be present. Such work may include; start up, clean up, seeding, painting (after the base surface has been approved by the inspector), and similar items. Contractor shall obtain approval of Work to be performed outside of the above work hours.
- E. Contractor shall not be charged for inspector's time for Work specifically identified by the Contract Documents to be performed outside the above Work time or on weekends.

SC-6.06.B Add the following sentence(s) at the end of paragraph 6.06.B:

1. Bidder shall indicate Minority Business Participation on the attachment to the Bid Forms. Low Bidder shall be required to submit the following Affidavits as attached to the end of this section:
- a. Affidavit C, Portion of the Work to be Performed by Minority Firms.
 - b. Affidavit D, Good Faith Efforts
2. Contractor whose Bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the Bid, except:

- a. If the listed subcontractor's bid is later determined by the Contractor to be non-responsible or non-responsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work; or
- b. With the approval of the awarding authority for good cause shown by the Contractor.

SC-6.06.C.3 Add the following paragraph immediately after paragraph 6.06.C2:

- 3. Owner or Engineer may furnish to any such Subcontractor or Supplier to the extent practical, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.

SC-6.06 Add a new paragraph immediately after Paragraph 6.06.G:

- H. The Contractor shall not award work valued at more than fifty (50%) percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

SC-6.09 Add the following paragraph(s) after 6.09.C:

- D. Contractor shall be responsible for conforming to the requirements of the approved sedimentation control plan, the rules and regulations of the Erosion Control Laws of the State of North Carolina, specifically the Sedimentation Pollution Control Act of 1973 (G.S. 113A) as amended, and the local jurisdiction where the project is located as it relates to land disturbing activities undertaken by Contractor. Contractor shall be responsible to Owner for any fines imposed on Owner as a result of Contractor's failure to comply with the above as it is further described in the Erosion Control Section of the Specifications.
- F. Should the Contractor cause the Owner to receive a Notice of Violation from a governmental agency, Contractor shall pay costs associated with Notice of Violation within ten (10) days of receipt of written notification. Costs shall include, but not be limited to:
 - 1. Fines imposed on the Owner by the agency.
 - 2. Required legal newspaper publications concerning violation.
 - 3. Required mailings to customers concerning notification of violation.
 - 4. Administrative, engineering, and construction costs associated with resolving the Notice of Violation.
- G. Notice of Violation may include, but not be limited to, the following problems:
 - 1. Inadequate erosion control measures.
 - 2. Equipment failure during the warranty period.

SC-6.12 Add a new paragraph after paragraph 6.12.A:

- B. Record Documents shall be updated daily. Should the Engineer determine that the Record Documents are not being properly maintained, approval of future payment requests shall be withheld.

SC-6.17 Add the following new paragraphs immediately after Paragraph 6.17.E:

- F. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, samples or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.
- G. In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Engineer's charges for such time unless the need for such substitution is beyond the control of Contractor.

ARTICLE SC-9, ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.03.A Add the following language at the end of paragraph 9.03.A:

The Engineer will provide Resident Project Representative services for this project. The Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative will be as stated in Exhibit D of the Agreement Between Owner and Engineer, E-500, 2008 Edition, as amended and executed for this specific Project.

ARTICLE SC-11, COST OF THE WORK, CASH ALLOWANCES; UNIT PRICE WORK

SC-11.01.A.5.c, Delete Paragraph 11.01.A.5.c in its entirety and insert the following in its place:

- C. Construction Equipment and Machinery:
 - 1. Rentals of all construction equipment and machinery, and the parts thereof in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - 2. Costs for equipment and machinery owned by Contractor will be paid at a rate shown for such equipment in the Rental Rate Blue Book (latest edition). An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include 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, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.

SC-11.03.D.1 Delete Paragraph 11.03.D.1 in its entirety and insert the following in its place:

- 1. if the Bid price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and

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

SC-12.02 Add the following paragraph after 12.02.B:

- C. Time Extension: Contract time extensions for weather delays do not entitle Contractor to "extended overhead" recovery.

SC-12.03 Add the following paragraphs after 12.03.E:

- F. Time extension for weather delays due to rain shall only be considered for above average precipitation. Monthly Normals from the National Climate Data Center 1981-2010 Climate Normals shall be used to determine the average number of days with precipitation greater than or equal to 0.10 inch for each month. The 1981-2010 Climate Normals reports can be found via the following link: <https://www.ncdc.noaa.gov/cdo-web/datatools/normals>.
- G. Claims for additional Contract Time for delays beyond the Contractor's control shall be submitted in accordance with Article 10 of the General Conditions with the Contractor's monthly pay request. Submittal shall include the number of days requested and the reason for the delay. Engineer shall notify the Owner and Contractor of his decision in accordance with Article 10 of the General Conditions. Approval of time shall be included in a Change Order.

ARTICLE SC-14, PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02.A Add the following to the end of paragraph 14.02.A.3:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the Contractor.

SC-14.02.C Delete paragraph 14.02.C.1 in its entirety and insert the following in its place:

- 1. The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 14.02.D will become due 20 days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

ARTICLE SC-16, DISPUTE RESOLUTION

SC-16.01.A, Delete the second and third sentence in Paragraph 16.01 A.

SC-16.01.B, Delete Paragraph 16.01.B in its entirety and replace it with the following:

- B. Disputes shall be resolved in accordance with the dispute resolution process adopted on February 26, 2002 by the N. C. State Building Commission. The "Rules Implementing Mediated Settlement Conferences in North Carolina Public Construction Projects" are attached to this section.

SC-16.01.C, Delete Paragraph 16.01.C in its entirety and replace it with the following:

- C. All parties agree that only the North Carolina courts shall have jurisdiction over the Contract and any controversies arising out of this Contract and this agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

END OF DOCUMENT

Federal Funding Provisions

Definitions: As used throughout this Attachment, the following terms shall have the meaning set out below:

- a) "Town" or "Applicant" refers to the Town of Emerald Isle - Government activities and organizations.
- b) "Contract" Identifies this contract or any modification thereto.
- c) "Contractor or Vendor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work there under, to include that of any subcontractor or vendor.

A. **Equal Employment Opportunity:** For contracts for construction work – "the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services." 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) 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, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) 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.
- (6) 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.
- (7) 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 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.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- B. **Davis-Bacon Act (40 U.S.C. 3141-3148)**: If this contract is a "prime construction contract in excess of \$2,000," the contractor shall generally comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and shall specifically: (i) meet the requirements of 29 C.F.R. Section 5.5(a)(1)-(10) as may be applicable; (ii) pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor; and (iii) pay wages not less than once a week.
- C. **Copeland "Anti-Kickback" Act (40 U.S.C. 3145)**: If the Davis-Bacon Act applies to this contract, then
- i. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract;
 - ii. The contractor or subcontractor shall insert in any subcontracts the requirements in "i" above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses; and

iii. breach of the contract clauses above shall be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- D. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**: If this contract involves in excess of \$100,000 and the employment of mechanics, laborers, and construction work, contractor shall comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5, and the provisions of 29 C.F.R. § 5.5(b) are incorporated herein by reference:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

- E. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)**: If this contract involves in excess of \$150,000, the contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

Further, The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

- F. **Debarment and Suspension (Executive Orders 12549 and 12689)**: This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded

(defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Additionally, the contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Additionally, the execution of this contract or the acceptance of benefits hereunder constitutes a certification by the contractor that the foregoing provisions have been complied with and is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Finally, the contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. Part 3000, subpart C throughout the period of this contract and shall include a provision requiring such compliance in its lower tier covered transactions.

- G. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**: Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally 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 federal awarding agency.

If applicable, contractors must sign and submit a certification regarding lobbying found in Attachment (A) of this document.

- H. **Procurement of Recovered Materials (2 C.F.R. § 200.322)**: In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired - Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor further agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

I. **Prohibition on Contracting for Covered Telecommunications Equipment or Services:**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

J. **Domestic Preferences for Procurements:** As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the **United States**. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

K. **Access to Records:** The Contractor agrees (i) to provide Town, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives 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; (ii) to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed; (iii) to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract; and (iv) that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States, in compliance with the Disaster Recovery Act of 2018. Additionally, the contractor shall comply with the records retention requirement of 2 CFR § 200.324.

- L. **US Department of Homeland Security (DHS) Seal, Logos, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.
- M. **Compliance with Federal Law, Regulations, and Executive Orders – Acknowledgement of Federal Funding:** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- N. **Federal Government Obligations:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities of Town, contractor, or any other party pertaining to any matter resulting from this contract.
- O. **Program Fraud:** 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.
- P. **Affirmative Socioeconomic Steps:** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- Q. **Copyright and Data Rights:** When applicable, the Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by Town.

Federal Funding Provisions
Attachment (A)

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

APPENDIX E

MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Payment Amount	Owner Use Only

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

Date: _____

Approved/Certified By: _____

Name

Title

Signature

****THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT****

State of North Carolina - **AFFIDAVIT C** - Portion of the Work to be Performed by Minority Firms

County of _____

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

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

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

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

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

Name and Phone Number	*Minority Category	Work description	Dollar Value

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

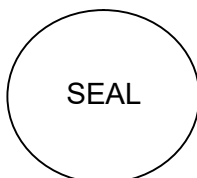
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

State of North Carolina AFFIDAVIT D – Good Faith Efforts

County of _____

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

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

(Name of Bidder)

Affidavit of: _____

I do certify the attached documentation as true and accurate representation of my good faith efforts.

(Attach additional sheets if required)

Name and Phone Number	*Minority Category	Work description	Dollar Value

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

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions.

Examples of documentation include, but are not limited to, the following evidence:

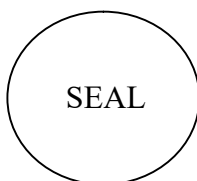
- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to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

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

Work Change Directive

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

Contractor is directed to proceed promptly with the following change(s):

Item No.	Description

Attachments (list documents supporting change):

Purpose for Work Change Directive:

Authorization for Work described herein to proceed on the basis of Cost of the Work due to:

- ☐ Nonagreement on pricing of proposed change.
- ☐ Necessity to expedite Work described herein prior to agreeing to changes on Contract Price and Contract Time.

Estimated change in Contract Price and Contract Times:

Contract Price \$ _____ (increase/decrease) Contract Time _____ (increase/decrease)
days

Recommended for Approval by Engineer:	Date
Authorized for Owner by:	Date
Received for Contractor by:	Date
Received by Funding Agency (if applicable):	Date:

Change Order

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Attachments (list documents supporting change):

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ _____

[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____

\$ _____

Contract Price prior to this Change Order:

\$ _____

[Increase] [Decrease] of this Change Order:

\$ _____

Contract Price incorporating this Change

\$ _____

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working ☐ Calendar days

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:

Substantial completion (days): _____

Ready for final payment (days): _____

Contract Times prior to this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

Contract Times with all approved Change Orders:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

RECOMMENDED:

By: _____

Engineer (Authorized Signature)

Date: _____

Approved by Funding Agency (if applicable):

ACCEPTED:

By: _____

Owner (Authorized Signature)

Date: _____

ACCEPTED:

By: _____

Contractor (Authorized Signature)

Date: _____

Date: _____

Change Order

Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

TECHNICAL SPECIFICATIONS

SECTION 01100

SUMMARY OF WORK

PART 1 GENERAL

1.01 WORK COVERED BY CONTRACT DOCUMENTS

- A. Work described in this Project Manual includes the provision of labor, materials, equipment, and services required to complete the FEMA 428-Public Access Walkway Project for the Town of Emerald Isle, North Carolina.

1.02 CONTRACTS

- A. Project construction will be let under one or multiple Contract(s) as defined in the Instruction to Bidders, with construction including, but not limited to, the following major work items:

The construction of up to 13 improved public beach accesses and appropriate miscellaneous appurtenances.

1.03 DIVISION OF WORK

- A. The following division of the Project Manual by Contract is for general reference for the Contractors and does not relieve each Contractor of reviewing the Work and providing proper coordination between Contracts.
- B. The following Sections of the Project Manual shall be applicable to all Contracts:
 - 1. Bidding Requirements
 - 2. Contract Forms
 - 3. Contract Conditions
 - 4. Division 1, General Requirements

1.04 WORK SEQUENCE

- A. Construction Progress Schedule, as required in Section, Submittal Procedures, shall indicate the anticipated items and times that the Work will interfere with normal facility operation.
- B. Notice To Proceed shall be based on an agreed upon date between Owner and Contractor.

1.05 OWNER OCCUPANCY

- A. Owner will occupy site during entire period of construction.
- B. Contractors shall cooperate with Owner to minimize conflict, and to facilitate Owner's operations.

1.06 CONTRACTOR USE OF SITE

- A. Only Owner's right to perform construction and maintenance operations with its own forces and to employ separate contractors on portions of the Project limits contractor's use of site during the construction period. Work at the Project site by Owner will be coordinated with the Contractor.
- B. Contractor shall provide his own staging area as necessary for his Work.

PART 2 PRODUCTS
Not Used

PART 3 EXECUTION
Not Used

END OF SECTION

SECTION 01270

UNIT PRICES

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Delineation of measurement and payment criteria applicable to Work performed under Contract by the unit price payment method.

1.02 FIELD MEASUREMENT

- A. Take measurements and compute quantities for submittal of the monthly pay request unless specified otherwise in the measurement paragraphs as indicated in this Section.

1.03 CHANGE IN QUANTITIES

- A. Increase in the quantity of a bid item above what is indicated in the Bid Form shall only be made by a Change Order as required by the Contract Documents.
- B. A final adjusting Change Order shall be made for adjustment of the actual quantities installed prior to submittal of the final pay request.

1.04 GENERAL

- A. Method of measurement for the individual Bid Items shall be as specified below.
- B. Payment for each item shall be in accordance with the Contract Unit Price times the number of units installed in accordance with the Contract Documents.
- C. Work for each bid item shall include, but not be limited to, the work listed below, and the labor, equipment, and services required and reasonably implied by the Contract Documents for a complete installation. **Raw materials are to be purchased by Owner. Contractor is responsible for coordination and pickup/delivery from supplier.**
- D. Administrative cost including, but not limited to, mobilization, bonds, insurance, shop drawing submittal, project signage, video and photographic records, coordination of construction activities (including but not limited to updating master construction schedule, providing weekly tasks schedule, coordination with owner, engineer, utility providers, permitting agencies, etc.), as-built documentation and office administration for the Project construction shall be included in the individual unit price items.
 - 1. Obtain approval of cleanup from owner of right-of-way.

1.05 BID ITEMS LISTED BY THE UNIT "LUMP SUM" (LS) OR "EACH" (EA)

- A. Measurement: By the number installed.
- B. Water work items:
 - 1. Beach Access Walkway:
Payment shall include all labor, equipment, mobilization and coordination for the removal and disposal of existing structure(s), delivery of new materials, construction of structure(s) per plans and specifications. Price shall include all associated activities required to construct the walkway inclusive of erosion control, temporary signage, and site cleanup.

PART 2 PRODUCTS
Not Used

PART 3 EXECUTION
Not Used

END OF SECTION

SECTION 01312

PROJECT COORDINATION

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. This Section specifies administrative and supervisory requirements necessary for Project coordination including, but not necessarily limited to:
 - 1. Coordination.
 - 2. Administrative and supervisory personnel.
 - 3. General installation provisions.
 - 4. Cleaning and protection.

1.02 GENERAL COORDINATION REQUIREMENTS

- A. Responsibilities of Contractor:
 - 1. Coordinate construction activities for the Project to assure efficient and proper installation of each part of the Work.
 - 2. Where availability of space is limited, coordinate installation of components to assure maximum accessibility for maintenance. Make adequate provisions to accommodate components scheduled for later installation.
 - 3. Where necessary, prepare memoranda for distribution to each party involved outlining special procedures required for coordination. Include such items as required notices, reports, and attendance at meetings. A copy of all memoranda shall be submitted to the Engineer.
- B. Administrative Procedures: Coordinate scheduling and timing of required administrative procedures with other construction activities to avoid conflicts and ensure orderly progress of the Work. Such administrative activities include, but are not limited to, the following:
 - 1. Preparation of schedules.
 - 2. Installation and removal of temporary facilities.
 - 3. Delivery and processing of submittals.
 - 4. Progress meetings.
 - 5. Installation meetings.
 - 6. Project Close-out activities.
- C. Conservation: Coordinate construction activities to ensure that operations are carried out with consideration given to conservation of energy, water, and materials.
 - 1. Salvage materials and equipment involved in performance of, but not actually incorporated in, the Work. Refer to other sections for disposition of salvaged materials that are designated as Owner's property.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

END OF SECTION

SECTION 01450
QUALITY CONTROL

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Quality assurance and control of installation.
- B. Inspection and testing laboratory services.
- C. References.

1.02 QUALITY ASSURANCE/CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, Products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply fully with manufacturers' instructions, including each step in sequence.
- C. Should manufacturers' instructions conflict with Contract Documents, request clarification from Engineer before proceeding.
- D. Comply with specified standards as a minimum quality for the Work except when more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Perform work by persons qualified to produce workmanship of specified quality.
- F. Secure Products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, or disfigurement.

1.03 REFERENCES

- A. Conform to reference standard by date of issue current to date of Bid opening.
- B. Should specified reference standards conflict with Contract Documents, request clarification from Engineer before proceeding.
- C. Contractual relationship of parties to the Contract shall not be altered from the Contract Documents by mention or inference otherwise in any reference document.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

END OF SECTION

SECTION 01500

TEMPORARY FACILITIES AND CONTROLS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Temporary Utilities: Electricity, lighting, telephone service, water, and sanitary facilities.
- B. Work on public right-of-way.
- C. Traffic control.
- D. Temporary Controls: Barriers, enclosures and fencing, water control, dust control, erosion and sediment control, and protection of the work.
- E. Construction Facilities: Access roads, parking, progress cleaning, project signage, and field offices.

1.02 TEMPORARY UTILITIES

- A. Electricity
 - 1. Provide and pay for required power service for construction from Utility source.
- B. Lighting
 - 1. Provide and maintain lighting for construction operations as required by Contractor.
 - 2. Provide and maintain lighting to exterior staging and storage areas after dark for security purposes as required by Contractor.
- C. Telephone Service
 - 1. Provide, maintain and pay for telephone service to field office as required by Contractor.
- D. Water
 - 1. Provide, maintain, and pay for suitable quality water, including any necessary service(s) required for construction operations. Exercise measures to conserve water during construction.
- E. Sanitary Facilities
 - 1. Provide and maintain required facilities and enclosures as necessary to comply with the laws and ordinances of the authority having jurisdiction and the State of North Carolina.
 - 2. General Contractor shall provide the above sanitary facilities for all contractors, sub-contractors, Owner and Engineer at the Project Site.
 - 3. Existing facilities shall not be used.

1.03 WORK ON PUBLIC RIGHTS-OF-WAY

- A. Work on this Project is along rights-of-way under jurisdiction of the Owner:
 - 1. Town of Emerald Isle
- B. Prior to start of Work notify the Owner.
- C. Work shall conform to the requirements and be subject to the approval of the above agency(ies).
- D. Clean rights-of-way as work progresses and daily.

- E. Power broom existing pavement as work progresses.
- F. Consult with the above agency(ies) in establishing public thoroughfares to be used for haul routes and site access.
- G. Confine construction traffic to designated haul routes.
- H. Provide traffic control along haul routes to regulate traffic and to minimize interference with public.
- I. Provide and maintain access to fire hydrants, free of obstructions.

1.04 TRAFFIC CONTROL

- A. On public and private road rights-of-way provide traffic control devices when construction encroaches within the right-of-way. Devices shall include, but not be limited to, cones, drums, flares, warning signs, temporary pavement marking, warning lights, and flagman.
- B. Traffic control devices shall provide the following:
 - 1. Protection of motorists, pedestrians and workers from accident hazards.
 - 2. Advance public information of proposed work sites.
 - 3. Establishment of an orderly and safe flow of traffic and to minimize traffic congestion.
 - 4. Provision of access for emergency vehicles.
- C. Traffic control devices shall be used in accordance with the latest edition of the NC DOT "Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)."
- D. Provide personnel trained in traffic control.

1.05 TEMPORARY CONTROLS

- A. General
 - 1. Temporary controls shall be the responsibility of each Contractor for their respective work unless noted otherwise.
- B. Barriers
 - 1. Provide barriers to prevent unauthorized entry to construction areas for the safety of the public, the protection of the work, and to protect existing facilities and adjacent properties from damage from construction operations.
 - 2. Provide protection for plant life designated to remain. Replace damaged plant life.
 - 3. Protect vehicular traffic, stored materials, site, and structures from damage.
- C. Water Control
 - 1. Grade site to drain. Provide, operate, and maintain pumping equipment to maintain excavations free of water.
 - 2. Protect site from running water.
- D. Dust Control
 - 1. Execute Work by methods designed to minimize raising dust from construction operations.
 - 2. Provide positive means to prevent airborne dust from dispersing into atmosphere.
- E. Erosion and Sediment Control
 - 1. Provide Erosion and Sediment Control as indicated on the Drawings and specified in Section, Erosion Control.

F. Protection of Installed Work

1. Protect installed Work and provide special protection where specified in individual specification Sections.
2. Provide temporary and removable protection for installed Products. Control activity in immediate work area to minimize damage.
3. Prohibit traffic from landscaped areas.

1.06 CONSTRUCTION FACILITIES

A. General

1. Construction facilities shall be the responsibility of each Contractor for their respective work unless noted otherwise.

B. Parking

1. When site space is not adequate, arrange for temporary off site surface parking areas to accommodate construction personnel.
2. Do not allow vehicle parking in existing right-of-way or to block existing drives.
3. Do not allow vehicle parking on private property without prior approval.

C. Progress Cleaning

1. Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
2. Remove waste materials, debris, and rubbish from site periodically and dispose off site.

1.07 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary above grade or buried utilities, equipment, facilities, and materials, prior to Final Inspection.
- B. Clean and repair damage caused by installation or use of temporary work.
- C. Restore existing facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

END OF SECTION

SECTION 01600

PRODUCT REQUIREMENTS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Products.
- B. Transportation and handling.
- C. Storage and protection.
- D. Damaged products.
- E. Warranty

1.02 PRODUCTS

- A. Products: Means new material, machinery, components, equipment, fixtures, and systems forming the Work. Does not include machinery and equipment used for preparation, fabrication, conveying, and erection of the Work. Products may also include existing materials or components specified in the Contract Documents for reuse.

1.03 TRANSPORTATION AND HANDLING

- A. Transport and handle Products in accordance with manufacturer's instructions.
- B. Ship fabricated assemblies in largest sections permitted by carrier regulations and properly marked for ease of field erection.
- C. Promptly inspect shipments to assure that Products comply with specified requirements, quantities are correct, and Products are undamaged.
- D. Provide equipment and personnel to handle Products by methods to prevent soiling, disfigurement, or damage.

1.04 STORAGE AND PROTECTION

- A. Keep on site storage of material to a minimum.
- B. Store and protect Products in accordance with manufacturer's instructions in unopened original packages, with seals and labels intact and legible. Store sensitive Products in weather-tight, climate-controlled enclosures.
- C. For exterior storage of fabricated Products, place on sloped supports, above ground.
- D. Provide off site storage and protection when site does not permit on site storage.
- E. Cover Products subject to deterioration with impervious sheet covering. Provide ventilation to avoid condensation.
- F. Store loose granular Products on solid flat surfaces in a well drained area. Prevent mixing with foreign matter.
- G. Arrange storage of Products to permit access for inspection. Periodically inspect to assure Products are maintained under specified conditions.

1.05 DAMAGED PRODUCTS

- A. Remove damaged Products from Project site.

1.06 WARRANTY

- A. Contractor shall issue to Owner a warranty for the duration of one (1) year starting from the date of substantial completion. Warranty will cover the labor and craftsmanship of the work product and shall exclude material defects.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not used

END OF SECTION

SECTION 01700

EXECUTION REQUIREMENTS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Examination.
- B. Cutting and patching.
- C. General installation provisions.
- D. Cleaning and protection.
- E. Final inspection and tests.
- F. Adjusting.
- G. Close-out procedures.

1.02 EXAMINATION

- A. Verify that existing site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify that existing substrate is capable of structural support or attachment of new Work being applied or attached.
- C. Examine and verify specific conditions described in individual specifications sections.
- D. Verify that utility services are available, of the correct characteristics, and in the correct locations.

1.03 CUTTING AND PATCHING

- A. General
 - 1. Do not cut, or alter the work of other contractors without written approval of the Engineer.
 - 2. Work removed shall be replaced or repaired by the Contractor who removed or damaged the work, and a craftsman, skilled in the trade that the particular replacement requires, shall do the work. (i.e.: A mason, not an electrician, shall replace masonry removed by the Electrical Contractor.)
 - 3. Conduct removal operations in a manner that will eliminate hazards to persons and property and prevent the release of dust and rubbish into the air. Existing work, which is to remain and is damaged by contract operations shall be replaced with new materials at no additional cost to the Owner.
 - 4. For replacement of work removed, comply with specifications for type of work to be done.
- B. Inspection
 - 1. Inspect existing conditions of work including elements subject to movement or damage during cutting and patching, and excavating and backfilling.
 - 2. After uncovering work, inspect conditions affecting installation of new products.
- C. Preparation prior to cutting
 - 1. Provide shoring, bracing, and support as required to maintain structural integrity of project.

2. Provide protection for other portions of project.
 3. Provide protection from elements.
- D. Performance
1. Execute fitting and adjustment of products to provide finished installation to comply with specified tolerances, finishes.
 2. Execute cutting and demolition by methods to prevent damage to other work and provide proper surfaces to receive installation of repairs and new work.
 3. Execute excavating and backfilling as specified in Section, Trenching for Utilities.
 4. Restore work, which has been cut or removed; install new products to provide completed work in accordance with requirements of contract documents.
 5. Refinish entire surfaces as necessary to provide an even finish.
 - a. Continuous Surfaces: To nearest intersections.
 - b. Assembly: Entire Refinishing.

1.04 GENERAL INSTALLATION PROVISIONS

- A. Require Installer of each major component to inspect conditions under which Work is to be performed. Clean substrate surfaces prior to applying next material or substance. Do not proceed until unsatisfactory conditions have been corrected.
- B. Comply with manufacturer's recommendations to the extent that they are more explicit or stringent than requirements contained in Contract Documents.
- C. Provide attachment and connection devices and methods necessary for securing Work. Secure Work true to line and level. Allow for expansion and building movement.
- D. Check dimensions before starting each installation.
- E. Install each component during weather conditions and Project status that will ensure the best possible results. Isolate each part of the completed construction from incompatible material as necessary to prevent deterioration.
- F. Where mounting heights are not indicated, install individual components at standard mounting heights recognized within the industry for the particular application indicated. Refer questionable mounting height decisions to the Engineer for final decision.

1.05 CLEANING AND PROTECTION

- A. During handling and installation, clean and protect construction in progress and adjoining materials in place. Apply protective covering where required to ensure protection from damage or deterioration.
- B. Clean and maintain completed construction as frequently as necessary through the construction period. Adjust and lubricate components as required to ensure proper operation.
- C. Limiting Exposures: Supervise construction activities to ensure that no part of the construction, completed or in progress, is subject to harmful, or dangerous exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following:
 1. Excessive static or dynamic loading.
 2. Excessive internal or external pressures.
 3. Excessively high or low temperatures.
 4. Water or ice.

5. Abrasion.
6. Heavy traffic.
7. Misalignment.
8. Improper shipping or handling.
9. Theft.
10. Vandalism.

- D. Clean Project prior to final inspection. Project clean up shall include, but not be limited to, the following:
1. Repaint damaged paint surfaces.
 2. Clean debris from roofs, gutters, down spouts, and drainage systems.
 3. Sweep paved areas.
 4. Rake clean landscaped surfaces.
 5. Remove waste and surplus materials.
 6. Remove temporary construction facilities.

1.06 FINAL INSPECTION AND TESTS

- A. Complete punch list items as specified in the Agreement upon receipt from Engineer. Owner may have work not completed in the timeframe allotted performed by others with the cost deducted from Contractor's final payment. Additional engineering and inspection services required as a result of Contractor not completing punch list shall be at Contractor's expense.

1.07 ADJUSTING

- A. Adjust operating Products and equipment to ensure smooth and unhindered operation.

1.08 CLOSE-OUT PROCEDURES

- A. Submit written certification that Contract Documents have been reviewed, Work has been inspected, and is complete in accordance with Contract Documents and ready for Engineer's inspection.
- B. Provide submittals to Engineer that are required by governing or other authorities.
- C. Submit set of Record Documents indicating changes during construction as required in Section, Submittal Procedures.
- D. Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and final amount due.
- E. Submit the following with final Application for Payment:
1. Affidavit of Release of Liens
 2. Consent of Surety for Final Payment
 3. Affidavit of Payment of Debts and Claims
- F. Submit warranties as required by individual equipment specifications.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

END OF SECTION

SECTION 02220
MINOR DEMOLITION

PART 1 GENERAL

1.01 SCOPE

- A. Removal of designated equipment and structures.
- B. Identification of existing utilities.

1.02 RELATED SECTIONS

- A. The following Sections have work that is directly related to this Section. This does not relieve the Contractor of his responsibility of proper coordination of all the work:
 - 1. Section 01100 Summary of Work

1.03 SUBMITTALS

- A. Submit the following in accordance with Section, Submittal Procedures:
 - 1. Schedule
 - a. Indicate demolition and removal sequence.
 - 2. Record Drawings
 - a. Accurately record locations of capped utilities, subsurface obstructions, and other pertinent items uncovered during demolition.

1.04 REGULATORY REQUIREMENTS

- A. Conform to applicable code for demolition work, safety of structure, dust control and work safety requirements.
- B. Obtain required permits from authorities.
- C. Notify affected utility companies before starting work and comply with their requirements.
- D. Do not close or obstruct egress width to exits.
- E. Do not disable or disrupt building fire or life safety systems without 3 day prior written notice to the Owner.
- F. Conform to procedures applicable when discovering hazardous or contaminated materials.

1.05 SCHEDULING

- A. Schedule Work and notify Owner in accordance with Section, Summary of Work.
- B. Scheduling of work shall be done with the approval of Owner.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.01 PREPARATION

- A. Provide, erect, and maintain temporary barriers as required for demolition and as indicated on the Drawings.
- B. Erect and maintain weatherproof closures for exterior openings.
- C. Erect and maintain temporary partitions to prevent spread of dust, odors and noise to permit continued Owner occupancy of the facility.
- D. Protect existing materials and areas which are not to be demolished.
- E. Prevent movement of structure; provide required bracing and shoring.
- F. Mark location of utilities.

3.02 DEMOLITION

- A. Conduct demolition to minimize interference with adjacent and occupied building areas.
- B. Identify, disconnect, remove and cap designated utilities within demolition areas.
- C. Demolition of structures shall include the complete removal of the structure foundation.
- D. Demolish in an orderly and careful manner. Protect existing supporting structural members and equipment. Cease operations immediately if structure appears to be in danger. Notify Engineer. Do not resume operations until directed.
- E. Except where noted otherwise, remove demolished materials from site as work progresses. Do not burn or bury materials on site.
- F. Upon completion of work, leave areas in clean condition.
- G. Remove temporary Work.

END OF SECTION

SECTION 02370
EROSION CONTROL

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Contractor, shall provide erosion control work. Work shall include, but not be limited to, the following:
 - 1. Erosion control at project site.
 - 2. Erosion control at borrows and disposal areas as required by Contractor. Cost shall include erosion control permits as necessary for borrow and disposal areas.
 - 3. Removal of surface debris.
 - 4. Temporary and permanent ground cover.
 - 5. Maintain and remove erosion control devices.
 - 6. Self Inspection and Monitoring

1.02 RELATED SECTIONS

- A. The following Sections have work that is directly related to this Section. This does not relieve the Contractor of his responsibility of proper coordination of all the work:
 - 1. Section 02920 Lawns and Grasses

1.03 REFERENCED STANDARDS

- A. "Erosion and Sediment Control Planning and Design Manual," issued by the N. C. Sedimentation Control Commission.

1.04 QUALITY ASSURANCE

- A. Conform to rules and regulations of the Erosion Control Laws of the State of North Carolina, specifically the Sedimentation Pollution Control Act of 1973 (G.S. 113A) as amended, and the local jurisdiction where the project is located.
- B. Post a copy of the approved erosion control permit, furnished by Owner, at the site prior to starting work. Maintain a copy of the approved erosion control plan at the site.
- C. Provide permanent ground cover as soon as possible, and no later than 15 working days after completion of work in a specific area.

1.05 WARRANTY

- A. Contractor is liable for damages to public and private property and fines as may be placed on the Project by the governing agencies due to failure to provide adequate erosion control devices.

PART 2 PRODUCTS

2.01 MATERIALS

- A. Matting / Erosion Control Fabric (ECF): Matting and ECF shall be heavy jute mesh over mulch held in place by staples. Commercially available ECFs may be used upon approval of the engineer. Approval of fabrics will require manufacturer's design

data regarding velocity, ditch slopes, method of installation, decay cycle, repair techniques, and grass growth enhancement characteristics.

- B. Wire Staples: 16 gauge steel wire, with minimum of 3" top and 4" long legs.
- C. Gravel for Stone Filters: #57 crushed stone.
- D. Filter Fabric: 7-1/2 oz. burlap fabric or other silt filtering fabric.
- E. Riprap:
 - 1. Class A: Stone shall conform to NCDOT standards and shall range in size from 2 to 6-inches with the stone gradation being equally distributed within the required size range.
 - 2. Class B: Stone shall conform to NCDOT standards and shall range in size from 5 to 12-inches with the stone gradation being equally distributed within the required size range.
 - 3. Type 1: Stone shall conform to NCDOT standards and shall range in size from 5 to 17-inches with the stone gradation being equally distributed within the required size range.

PART 3 EXECUTION

3.01 INSTALL EROSION CONTROL DEVICES

- A. Install erosion control devices, which shall be in place and operational prior to other land disturbing activity.
- B. After installing erosion control devices as indicated on the Drawings, verify that reasonable measures have been taken to prevent the sedimentation of nearby watercourses, existing and new facilities, and adjacent property.
- C. Should Contractor believe that additional measures are necessary to adequately prevent erosion, immediately notify Engineer. If rain is predicted before the Engineer can be notified, take measures as necessary to prevent siltation of nearby water courses and work will be paid for as provided in the General Conditions.
- D. After installing erosion control devices, request an inspection by the local agency having jurisdiction and the Engineer.
- E. Incorporate permanent erosion control work into the project at the earliest practicable time. Coordinate temporary erosion control measures with permanent erosion control measures and other work on the project to assure effective and continuous erosion control throughout the construction and post construction period.
- F. Maintain erosion control devices during construction until the disturbed areas are stabilized and the agency having jurisdiction and the Engineer have approved the removal of the erosion control devices.

3.02 BORROW AND DISPOSAL AREAS:

- A. Obtain and pay for erosion control permit for borrow and disposal areas as required by Contractor.
- B. Install and maintain erosion control devices in accordance with Contractor's approved plan.

3.03 MAINTENANCE

- A. Inspect erosion control devices after each rainfall. Make required repairs immediately. Remove sediment deposits when deposits reach approximately one-half of the capacity of the erosion control device.
- B. Respread accumulated sediments on the project site in a manner that will not adversely affect erosion control facilities and permanent ground cover.
- C. Silt Fence: Should the filter fabric decompose or become ineffective before approval of its removal by the Engineer, replace fabric immediately at no additional cost to the Owner.
- D. Temporary Construction Entrance: Maintain entrance in a condition that will prevent tracking or flow of mud onto public rights-of-way. This may require periodic top dressing with 2 inches of stone, as conditions require, at no additional cost to the Owner.

3.04 SEEDING

- A. Disturbed areas not covered by new construction shall be seeded.
- B. Provide temporary and permanent seeding in accordance with Section, Lawns and Grasses.

3.05 STABILIZATION AND CLEAN-UP

- A. Remove erosion control devices upon the approval of the permanent stabilization of this site by the agency having jurisdiction of the area and the Engineer. Dress sediment deposits remaining in place after the erosion control devices are removed to conform to the existing grade, prepared and seeded. Include cost of removal and cleanup in the cost of the installation of the device.

3.06 SELF INSPECTION AND MONITORING

- A. Provide self-inspection and reporting as required by the Sedimentation Pollution Control Act for the duration of the project. These inspections will be performed to ensure that the approved sedimentation and erosion control measures on the Drawings are installed, maintained, and working adequately.
 - 1. The inspections need to be conducted after each phase of the project, and continue until permanent ground cover is established.
 - 2. The self-inspection forms and information regarding this program are available at the following website: <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>
 - 3. Documentation of inspections shall be recorded on a single copy of the approved erosion and sedimentation control drawings. These Drawings and inspection reports shall be made available at the project site.
- B. Provide weekly self-monitoring in accordance with the NPDES Stormwater permit for all construction activities.

END OF SECTION

EXHIBITS



10th Street Beach Access



10th Street Beach Access



15th Street Beach Access



15th Street Beach Access



19th Street Beach Access



19th Street Beach Access



22nd Street Beach Access



22nd Street Beach Access



3133 Ocean Drive Beach Access



3133 Ocean Drive Beach Access



Conch Ct Beach Access



Conch Ct Beach Access



Eagles Nest Beach Access



Eagles Nest Beach Access



Elizabeth Street Beach Access



Elizabeth Street Beach Access



Hurst Street Beach Access



Janell Street Beach Access



Janell Street Beach Access



Lee Street Beach Access



Lee Street Beach Access



Ocean Crest Beach Access



Ocean Crest Beach Access



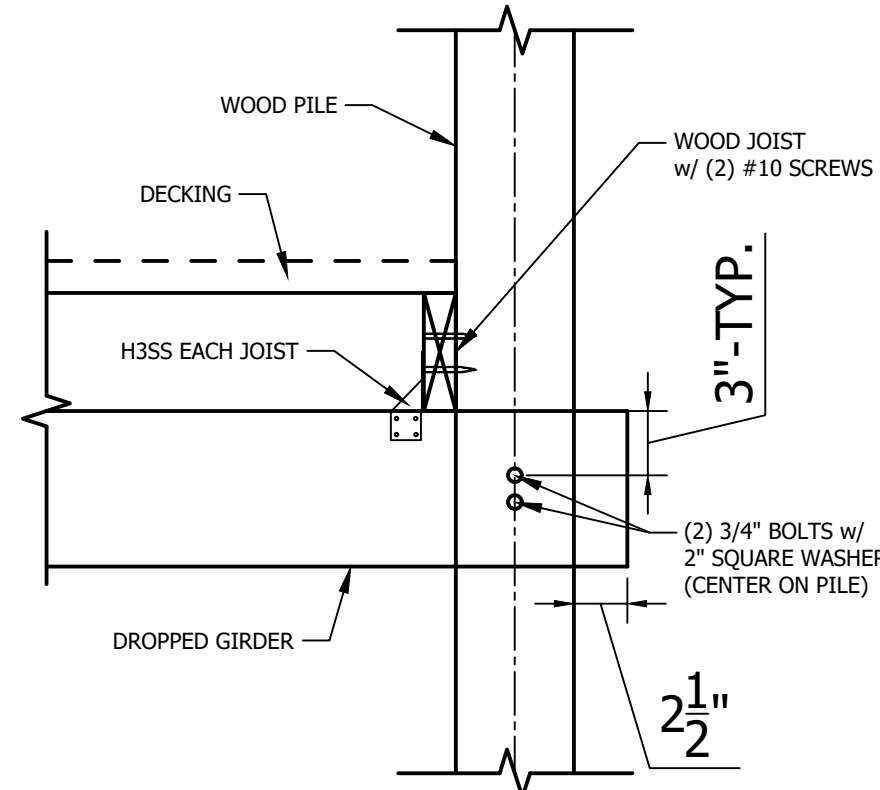
Sea Crest Interior Street Beach Access



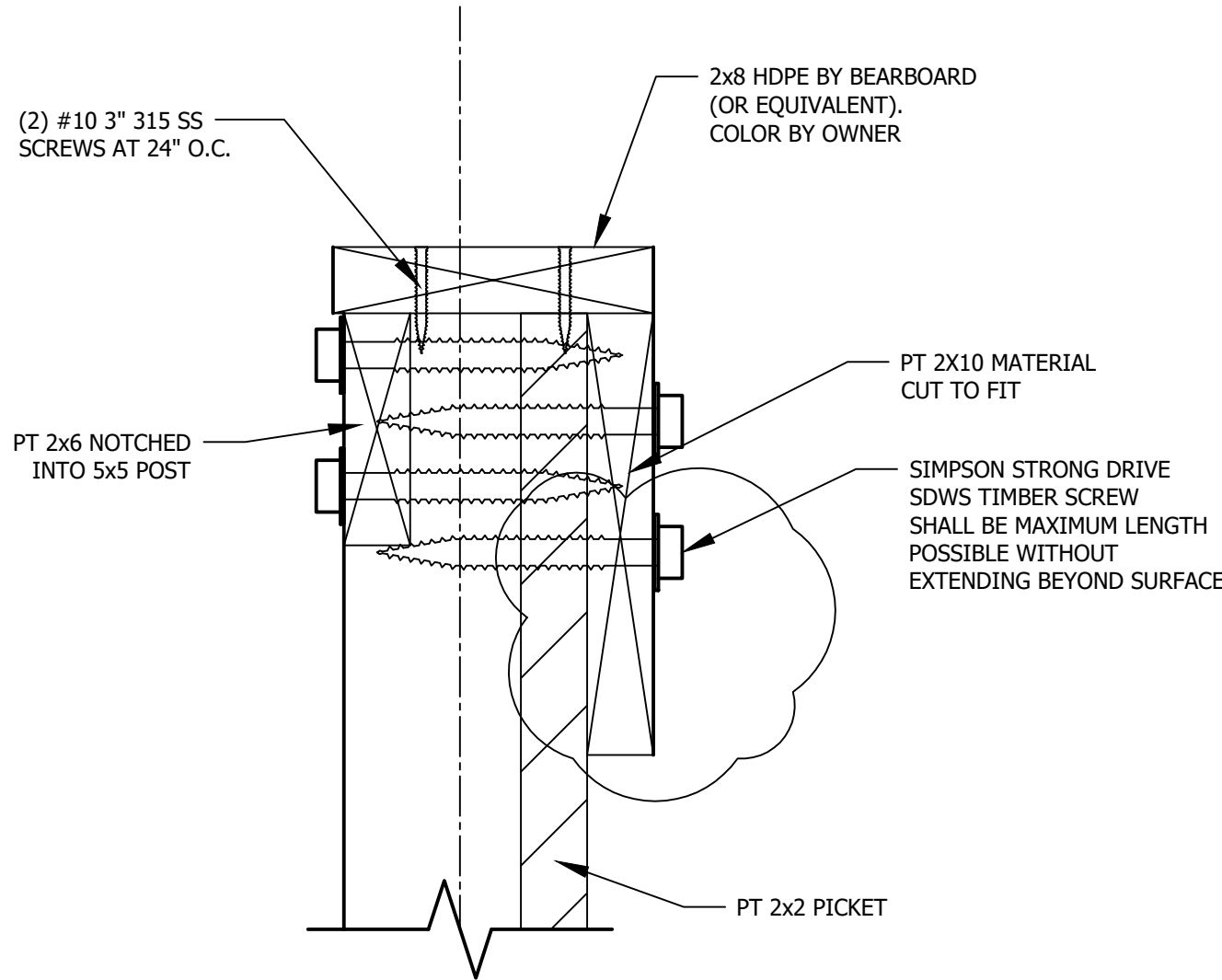
Sea Crest Interior Street Beach Access

PLAN SHEETS

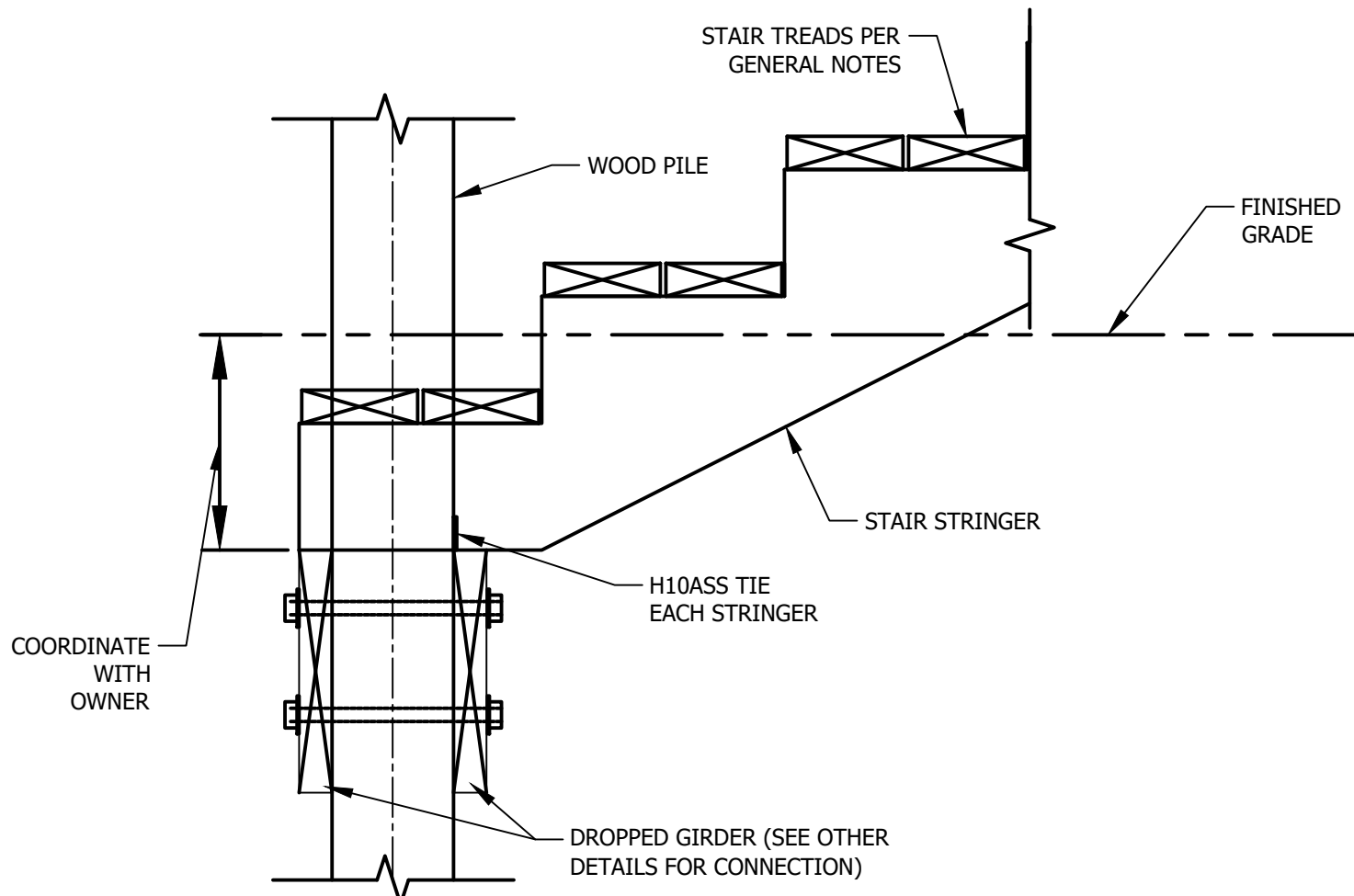
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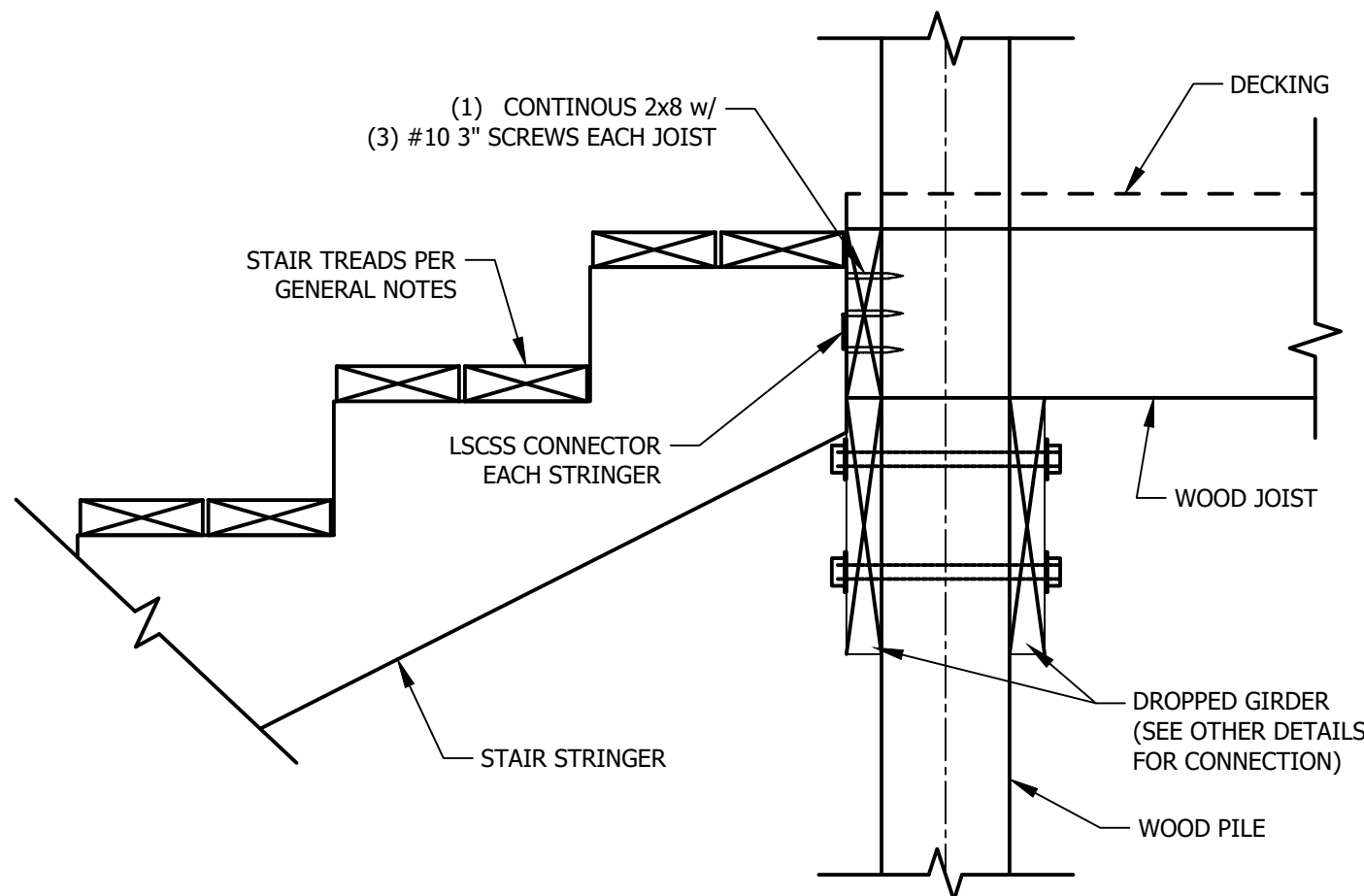
201- WOOD GIRDER @ WOOD PILE
1 1/2" = 1'-0"



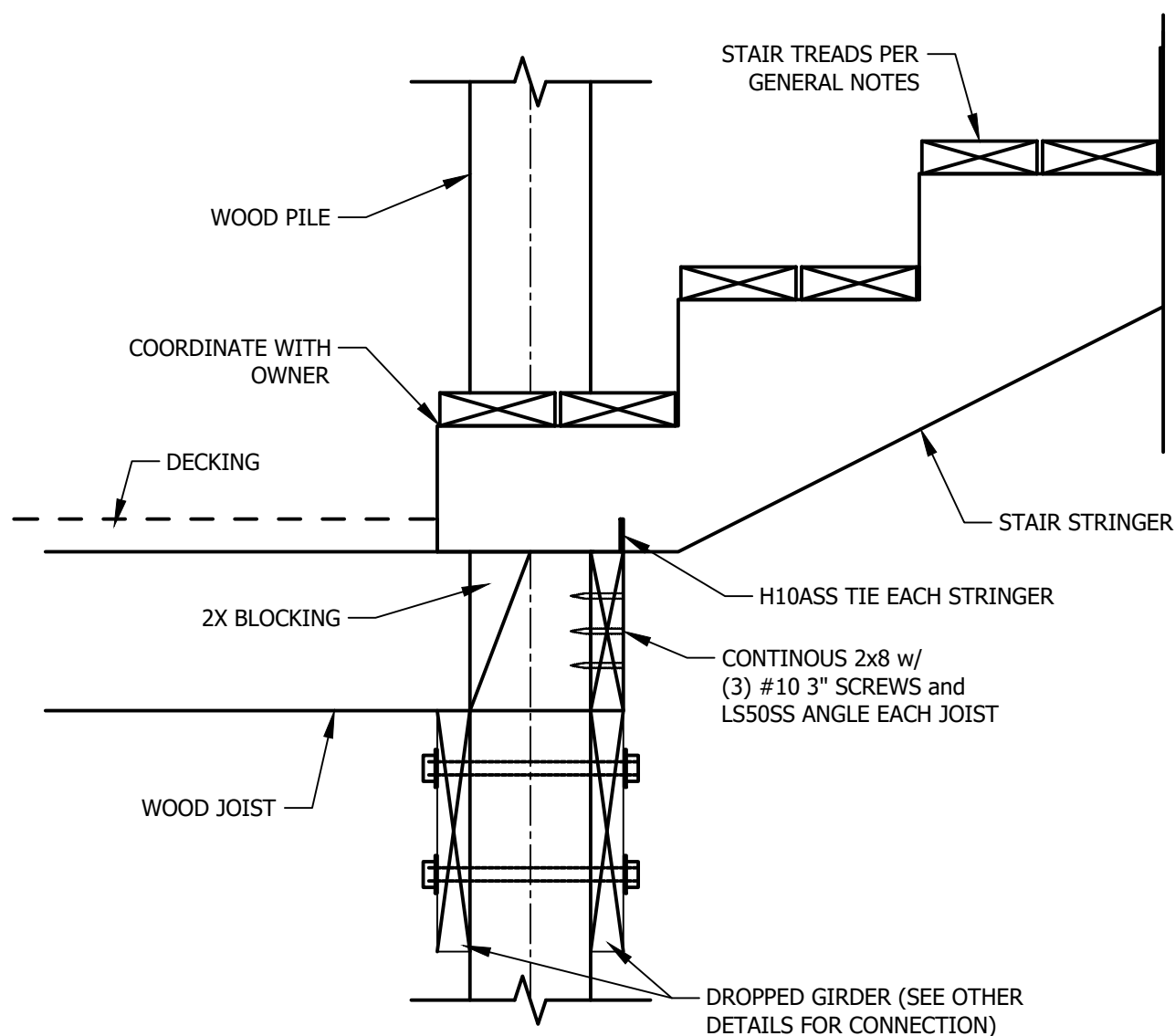
202- HANDRAIL DETAIL
3" = 1'-0"



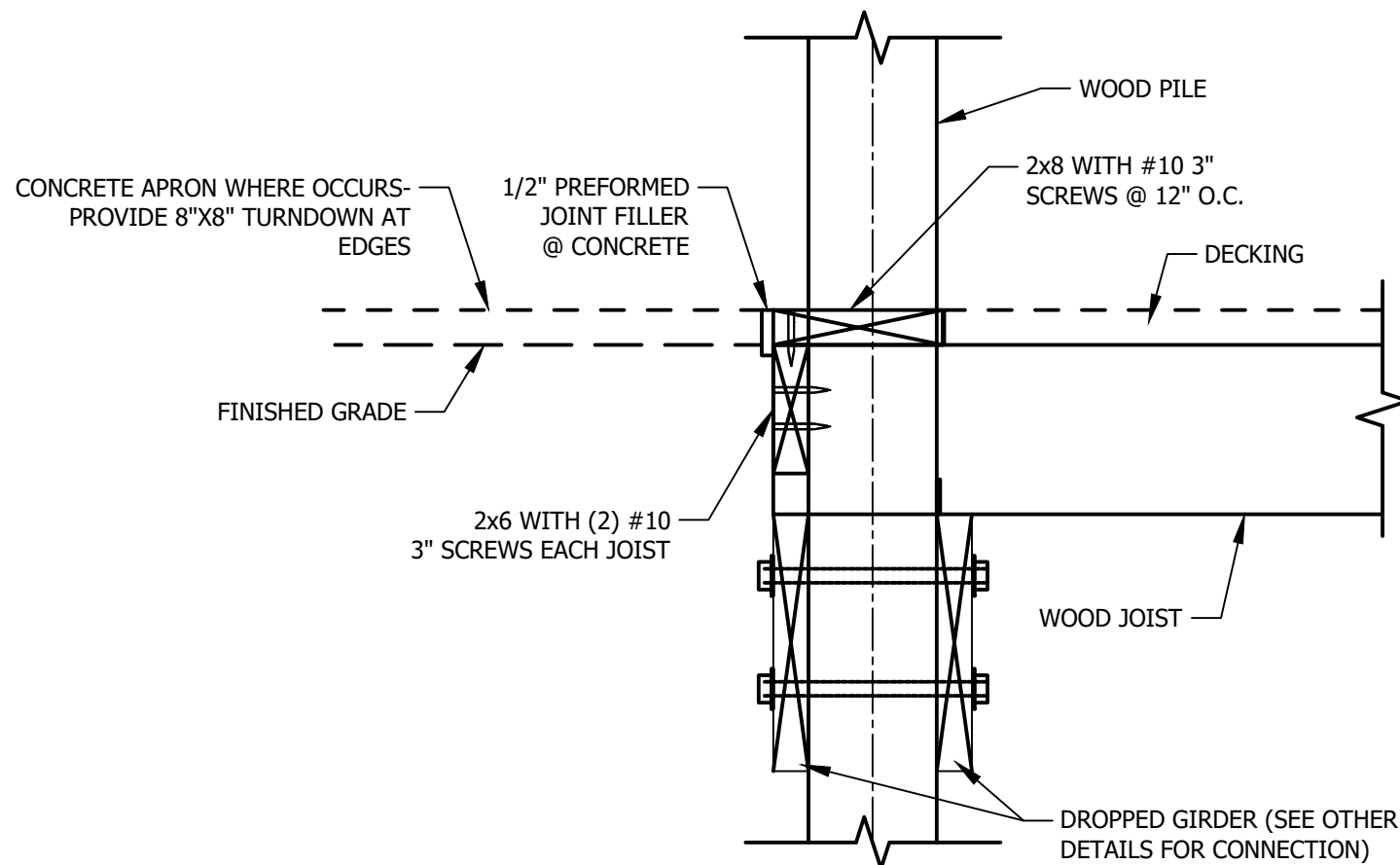
203- STAIR STRINGER @ GRADE (OCEAN SIDE)
1 1/2" = 1'-0"



204- STAIR STRINGER @ LANDING (HIGH SIDE)
1 1/2" = 1'-0"

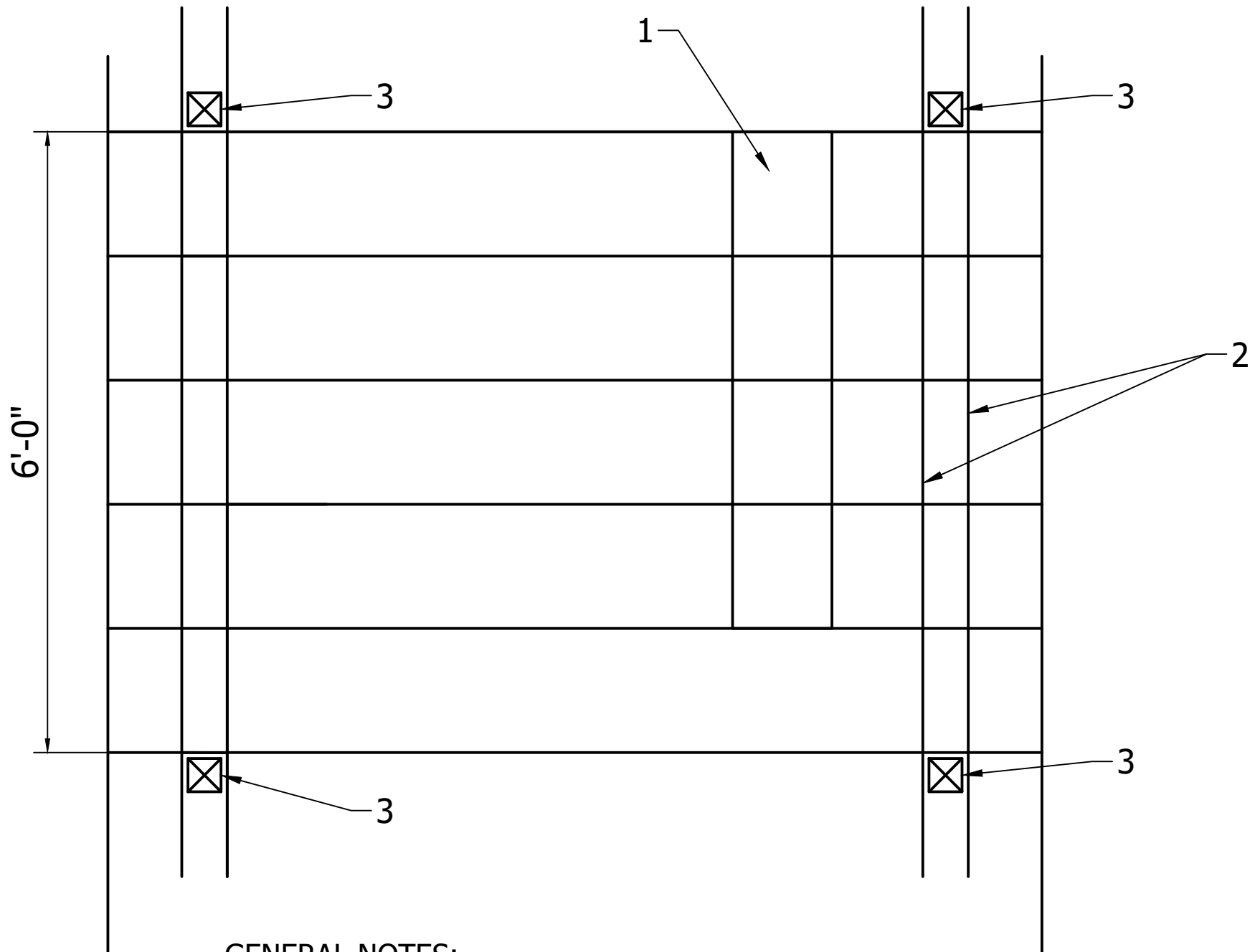


205- STAIR STRINGER @ LANDING (LOW SIDE)
1 1/2" = 1'-0"



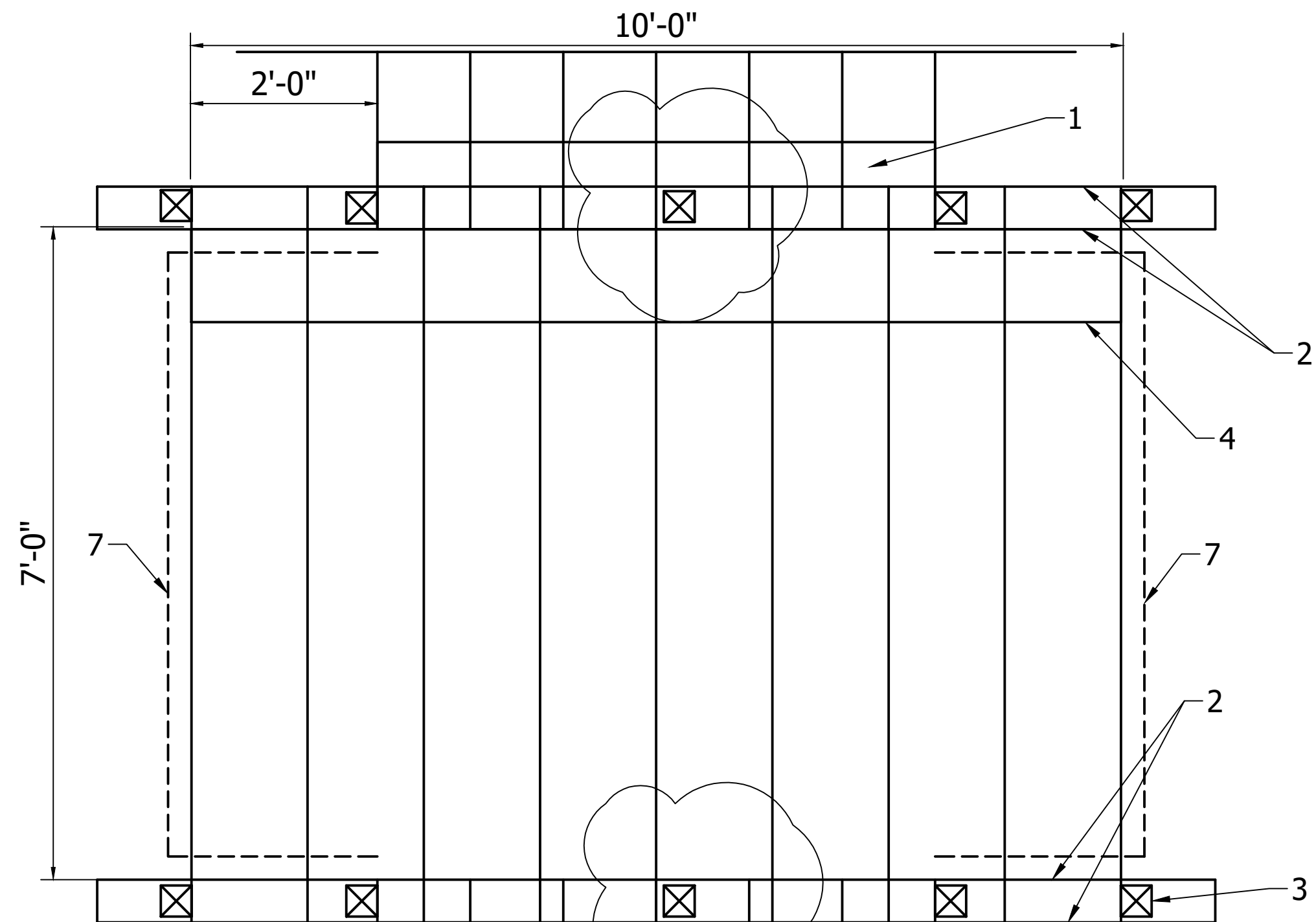
206- WALKWAY TRANSITION TO GRADE
1 1/2" = 1'-0"

1. 6'x1' SURE STEP PLUS DECKING OVER 2x8 WOOD JOISTS AT 14 1/4" ON CENTER - TYPICAL. ATTACH DECKING WITH (12) #10 x 3" PAN HEAD STAINLESS STEEL SCREWS EACH.
2. (2) 2x10 DROPPED GIRDER.
3. 6x6 WOOD PILE AT 6'-0" ON CENTER MAXIMUM.



- GENERAL NOTES:
1. PROVIDE ADDITIONAL PILES/DROPPED GIRDERS AS REQUIRED TO AVOID OBSTRUCTIONS.
 2. MAXIMUM HEIGHT ABOVE LOWEST ADJACENT FINISHED GRADE IS 8'-0".
 3. COORDINATE EXACT ELEVATIONS WITH THE TOWN OF EMERALD ISLE.

1- TYPICAL WALKWAY FRAMING PLAN
3/4" = 1'-0"



1. 6' x 1' SURE STEP PLUS DECKING OVER 2x8 WOOD JOISTS AT 14 1/4" ON CENTER - TYPICAL. ATTACH DECKING WITH (12) #10 x 3" PAN HEAD STAINLESS STEEL SCREWS EACH.
2. (2) 2x10 DROPPED GIRDER.
3. 6x6 WOOD PILE - TYPICAL OF 8.
4. 5'x1' SURE STEP PLUS DECKING OVER 2x8 WOOD JOISTS AT 15" ON CENTER. ATTACH DECKING WITH (10) #10 x 3" PAN HEAD STAINLESS STEEL SCREWS EACH. DOUBLE JOIST WHERE DECKING PANELS ABUT AT CENTER.
5. SEE DETAIL 1 FOR TYPICAL WALKWAY FRAMING.
6. COORDINATE EXACT LOCATIONS WITH THE TOWN OF EMERALD ISLE
7. RE-BUILD GUARDS, IF PRESENT, TO MATCH EXISTING CONDITIONS.

2- FRAMING PLAN @ BENCHES ON OPPOSITE SIDE
3/4" = 1'-0"

REVISIONS
4 "Revision per Engineer of Record: 5/10/2024

COASTAL STRUCTURAL ENGINEERING, PC
WILLIAM DZURICK
415 W8 MCLEAN DR
CAPE CARTERET, NC 28584

NORTH CAROLINA
Town of Emerald Isle
FEMA - PUBLIC ACCESS WALKWAY

DETAILS



ISSUED FOR:

BIDS

DATE: 01/17/2024

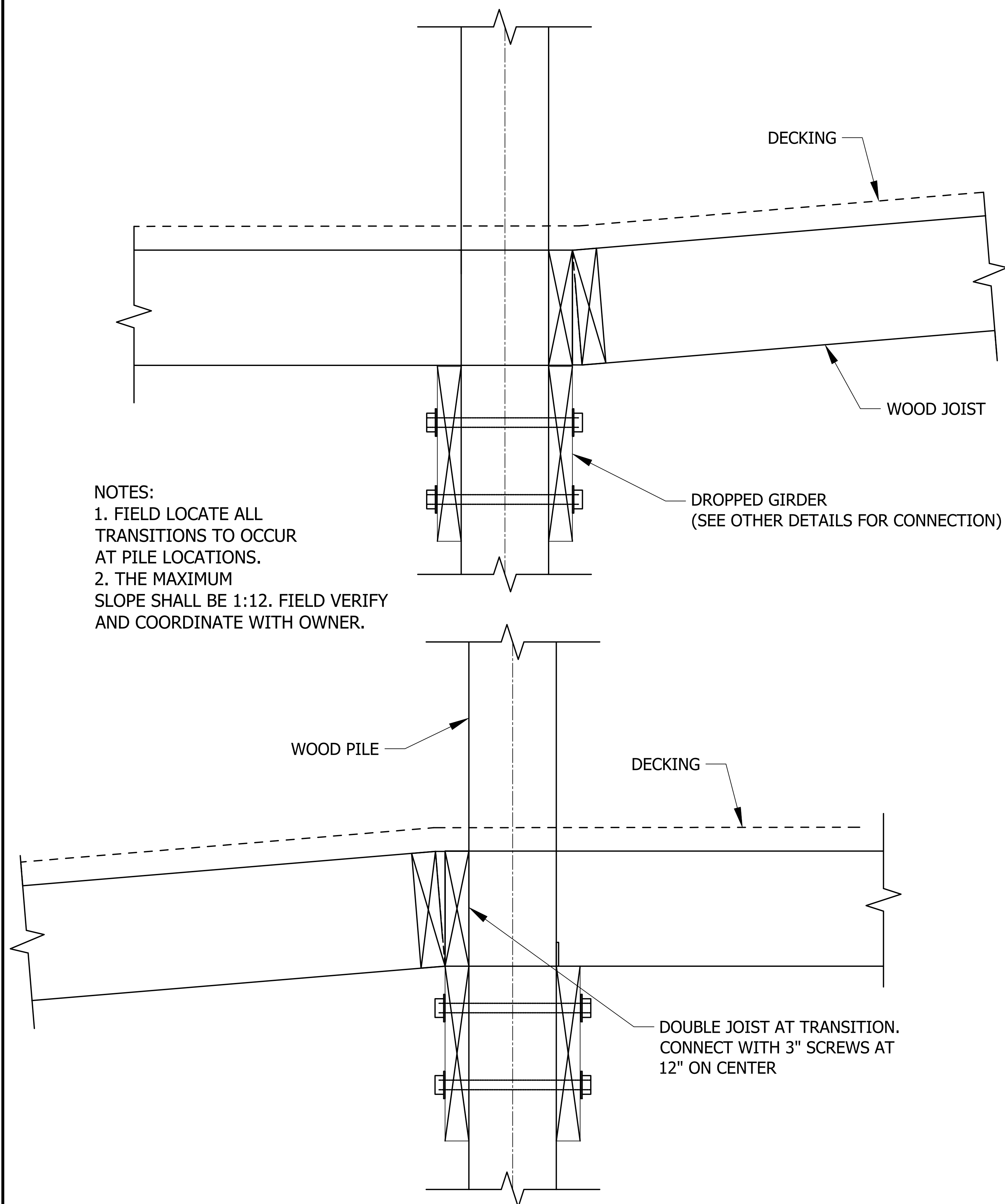
DESIGNED BY: WAD

DRAWN BY: MKF

CHECKED BY: WAD

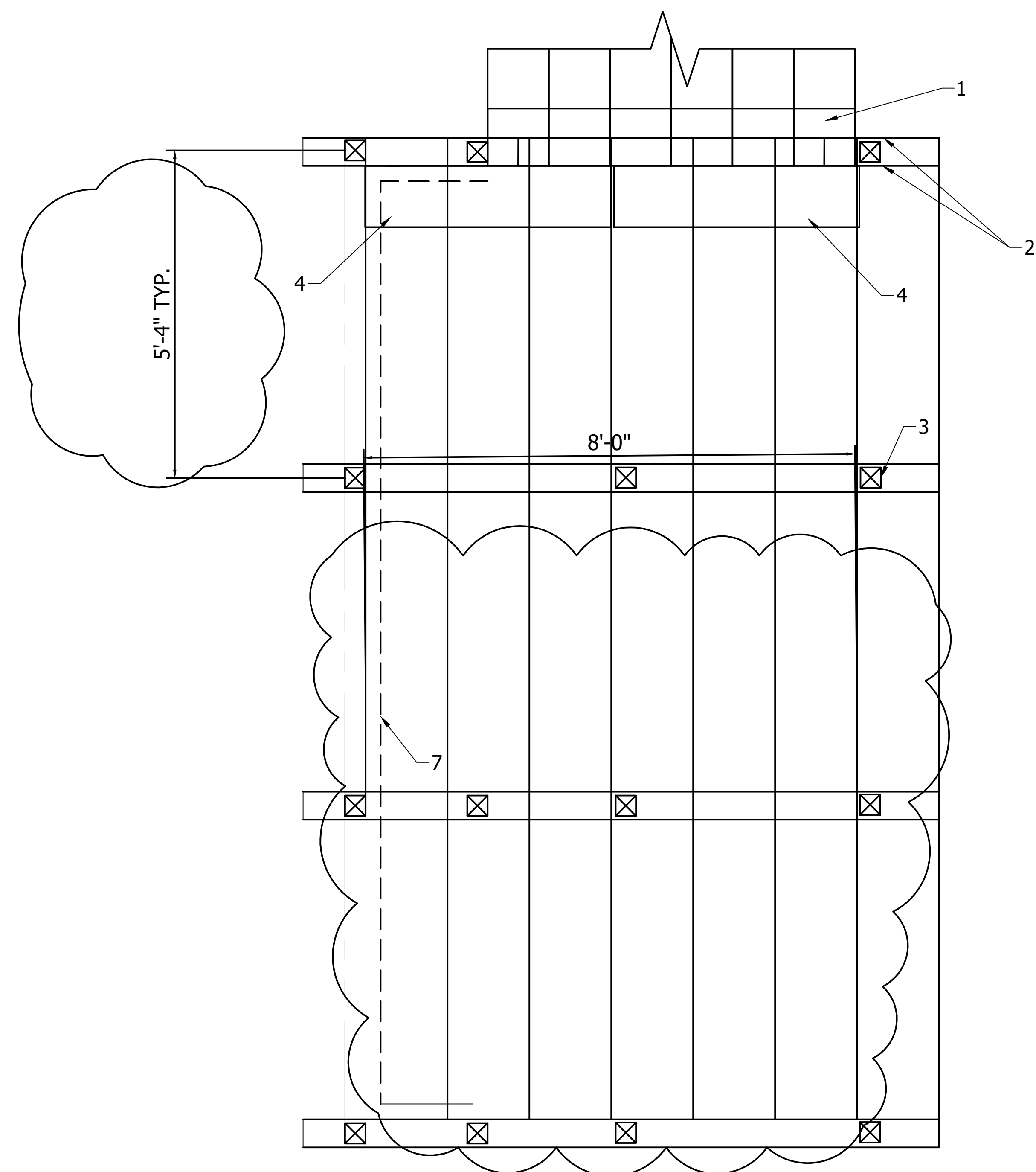
PROJECT NO.: 3496-A

S.1



207- WALKWAY TRANSITIONS

$$3'' = 1' - 0''$$

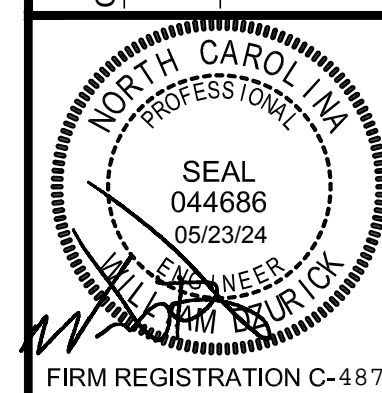


1. 6' x 1' SURE STEP PLUS DECKING OVER 2x8 WOOD JOISTS AT 14 1/4" ON CENTER - TYPICAL. ATTACH DECKING WITH (12) #10 x 3" PAN HEAD STAINLESS STEEL SCREWS EACH.
2. (2) 2x10 DROPPED GIRDER.
3. 6x6 WOOD PILE - TYPICAL OF 7.
4. 4'x1' SURE STEP PLUS DECKING OVER 2x8 WOOD JOISTS AT 16" ON CENTER. ATTACH DECKING WITH (10) #10 x 3" PAN HEAD STAINLESS STEEL SCREWS EACH. DOUBLE JOIST WHERE DECKING PANELS ABUT AT CENTER.
5. SEE DETAIL 1 FOR TYPICAL WALKWAY FRAMING.
6. COORDINATE EXACT LOCATIONS WITH THE TOWN OF EMERALD ISLE
7. RE-BUILD GUARDS, IF PRESENT, TO MATCH EXISTING CONDITIONS

3- FRAMING PLAN @ PARALLEL BENCH OPTION

$$\frac{3}{4}'' = 1'-0''$$

THESE DRAWINGS
HAVE BEEN PREPARED
BY OTHERS.



ISSUED FOR:

BIDS

DATE: 01/17/2024

DESIGNED BY: WAD

DRAWN BY: MKE

CHECKED BY: WAD

PROJECT NO.: 3496-A

S.2

REVISIONS

4 "Revision per Engineer of Record: 5/10/2024

County of Cumberland 1512	NORTH CAROLINA
Carteret County	

FEMA- PUBLIC ACCESS WALKWAY

DETAILS



COASTAL STRUCTURAL ENGINEERING, PC
Expanding your vision. Redefining your reality.
WILLIAM DZURICK
 415 WB MCLEAN DR

COASTAL STRUCTURAL ENGINEERING, PC
WILLIAM DZIRICK

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GENERAL

- 1. ALL CONSTRUCTION SHALL CONFORM WITH THE 2018 NC RESIDENTIAL BUILDING CODE, WITH LOCAL AMENDMENTS. THIS STRUCTURE IS LOCATED IN A 150 MPH WIND ZONE. THE CONTRACTOR SHALL BE FAMILIAR WITH AND ENSURE THAT ALL CONSTRUCTION CONFORMS WITH CHAPTERS 45 AND 46.
- 2. VERIFY ALL DIMENSIONS PRIOR TO START OF CONSTRUCTION. DO NOT SCALE THESE DRAWINGS.
- 3. THESE DRAWINGS RESPRESENT THE COMPLETED STRUCTURE AND ARE NOT INTENDED TO INDICATE THE METHOD OR MEANS OF CONSTRUCTIONS.
- 4. ALL EXISTING CONDITIONS SHALL BE FIELD VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION OR ORDERING MATERIALS. COORINDATE EXACT ELEVATIONS AND LOCATIONS WITH THE TOWN OF EMERALD ISLE. WHERE FIELD CONDITIONS DIFFER FROM THOSE DEPICTED, NOTIFY THE TOWN OF EMERALD ISLE.

DESIGN LOADS

WALKWAYS AND STAIRS = 100 PSF LIVE LOAD, 10 PSF DEAD LOADGROUND SNOW LOAD = 10 PSF WIND LOADS BASED ON ASCE 7 -16. V_{ULT} = 150 MPH, V_{ASD} = 113 MPH, CATEGORY II, EXPOSURE C.

FOUNDATIONS

THE STRUCTURAL ENGINEER IS NOT RESPONSIBLE FOR ANY GEOTECHNICAL ASPECTS OF THIS PROJECT. DESIGN IS BASED ON ASSUMED ALLOWABLE SOIL BEARING PRESSURE OF 2000 PSF PER IBC. CONTACT A GEOTECHNICAL ENGINEER AND THE STRUCTURAL ENGINEER IF UNSUITABLE CONDITIONS ARE FOUND. ALL FOOTINGS SHALL BEAR ON UNDISTURBED SOIL OR COMPACTED FILL MATERIAL. THE BUILDING OFFICIAL SHALL INSPECT THE FOOTINGS AND FOUNDATIONS PRIOR TO THE PLACEMENT OF CONCRETE. WE RECOMMEND THE OWNER RETAIN A GEOTECHNICAL ENGINEER TO EVALUATE THE SOIL CONDITIONS AND VERIFY SOIL BEARING PRESSURE CAPACITY.

PILES

TREATED TIMBER PILES SHALL CONFROM TO THE LATEST REVISION OF ASTM D-25 AND SHALL BE INSTALLED IN CONFORMANCE WITH SECTION R4603 OF THE BUILDING CODE. PILES SHALL BE OF SOUTHERN PINE OR DOUGLAS FIR, ROUGH SAWN. ALL TREATED TIMBER PILES SHALL BE PRESERVATIVE TREATED. TREAT CUT ENDS AND DRILLED HOLES OF TREATED TIMBER PILES WITH THE SAME PENETRATING PRESERVATIVE AS BASE TREATMENT CHEMICAL. ALL PILES SHALL BE EMBEDDED TO A DEPTH OF 5' AS REQUIRED PER SECTION (d) OF 15A NCAC 07H.0308..

IT IS RECOMMENDED THAT THE OWNER RETAIN A REGISTERED GEOTECHNICAL ENGINEER TO DETERMINE AND VERIFY CAPACITIES.

ROUGH CARPENTRY AND PLYWOOD


- 1. ALL FRAMING PER IBC CHAPTER 23.
- 2. ALL SAWN LUMBER SHALL BE SYP #2 OR BETTER UNLESS NOTED OTHERWISE.
- 3. ALL FRAMING SHALL PROVIDE A CONTINUOUS LOAD PATH FROM THE DECK TO THE FOUNDATIONS. THE CONTRACTOR SHALL PROVIDE HANGERS, STRAPS, CONNECTORS, ETC NOT SHOWN THAT ARE REQUIRED TO ENSURE THIS PATH IS CONTINUOUS. INSTALL ALL HARDWARE PER THE MANUFACTURER'S RECOMMENDATIONS.
- 4. ALL EXTERIOR LUMBER SHALL BE PREASURE TREATED.
- 5. ALL CLIPS, CONNECTORS, ETC SHALL BE MANUFACTURED BY SIMPSON STRONG-TIE OR EQUIVALENT.
- 6. ALL CONNECTORS AND HARDWARE, INCLUDING BOLTS, NUTS AND WASHERS, SHALL BE TYPE 316 STAINLESS STEEL.
- 7. USE SCREWS, NOT NAILS, AT CONNECTIONS FOR ALL SURFACES EXPOSED TO THE PUBLIC REACH WITHIN THE WALKWAY.

WOOD DECKS, STAIRS, AND RAMPS

- 1. WOOD DECKS, STAIRS AND RAMPS SHALL BE ASSEMBLED AND FABRICATED BY QUALIFIED CARPENTERS. ALL DECKS, STAIRS AND RAMPS SHALL BE SUPPORTED BY WOOD PILES AND GIRDERS AT NO MORE THAN 8'-0" ON CENTER. EQUALLY SPACE SUPPORTS.
- 2. PROVIDE CROSS BRACING AT ALL DROPPED GIRDERS GREATER THAN 48" MEASURED FROM LOWEST ADJACENT FINISHED GRADE TO TOP OF DECKING.
- 3. COORDINATE THE RISE AND RUN OF THE STAIRS WITH THE TOWN OF EMERALD ISLE. STAIR RISER HEIGHTS SHALL BE 7" MAXIMUM AND TREAD DEPTHS SHALL BE 11 INCHES MINUMUM.
- 4. STAIR STRINGERS SHALL BE 2X12 AT 9" ON CENTER. DOUBLE STRINGERS AT EDGES. MAXIMUM NOTCH (AS MEASURED PERPENDICULAR TO THE STRINGER PLANE) SHALL NOT EXCEED 5 ¼".
- 5. STAIR TREADS SHALL BE 2X6 SQUARE-EDGE TREX TRANSCEND BOARDS, OR EQUIVALENT, COLOR BY OWNER. ATTACH EACH TREAD TO EACH STRINGER WITH (2) #10 X 3" MURO T-SCREW TORX STAINLESS STEEL SCREWS EACH STRINGER INSTALLED FLUSH WITH DECKINS SURFACE.
- 6. PICKETS SHALL BE 2X2 SPACED SUCH THAT A 4" SPHERE CANNOT PASS THROUGH. ATTACH EACH PICKET WITH (2) #10 X 3" SCREWS IN PRE-DRILLED HOLES AT TOP AND BOTTOM.
- 7. RAMPS SHALL HAVE A RUNNING SLOPE NOT STEEPER THAN ONE UNIT VERTICAL IN 12 UNITS HORIZONTAL (8-PERCENT SLOPE). THE MAX RISE FOR ANY RAMP RUN SHALL BE 30 INCHES. PROVIDE LANDINGS PER SECTION 1012.6 OF THE 2018 BUILDING CODE.
- 8. DECKING SHALL BE SURE-STEP PLUS BY PERSPECTIVE PRODUCTS. LENGTH AND LAYUP AS SPECIFIED ON PLANS. COORDINATE SPACING AND LOCATION OF PILES SUCH THAT FULL 1' WIDE SECTIONS OF DECKING ARE USED.

REVISIONS

Revision per Engineer of Record: 5/10/2024



COASTAL STRUCTURAL ENGINEERING, PC
415 WB MCLEAN DR
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Town of Emerald Isle

Carteret County

NORTH CAROLINA

FEMA- PUBLIC ACCESS WALKWAY

GENERAL NOTES



THESE DRAWINGS
HAVE BEEN PREPARED
BY OTHERS.

FIRM REGISTRATION C-4878

ISSUED FOR:

BIDS

DATE: 01/17/2024

DESIGNED BY: WAD

DRAWN BY: MKF

CHECKED BY: WAD

PROJECT NO.: 3496-A

S.3