

# CITY OF WILMINGTON, NC

## BID INVITATION

**BIDS ARE DUE:**

**FEBRUARY 4, 2020 at 3:00 PM**

**MANDATORY PRE-BID MEETING:**

**JANUARY 23, 2020 at 2:00 PM  
901 FANNING STREET**

**PROJECT NAME:**

**DREAMS CEILING REPAIRS**

**PROJECT NUMBER:**

**FLORC**

**CONTRACT NUMBER:**

**PB-IH-0120.1**

**PROJECT MANAGER:**

**AARON CRAMER (910) 341-0185**

**SUBMIT BIDS TO:**

**PURCHASING MANAGER  
PO BOX 1810  
305 CHESTNUT ST., 5th FLOOR  
WILMINGTON, NC 28401  
(910) 341-7830**

**BIDDERS NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**BONDS HAVE BEEN WAIVED FOR THIS PROJECT**

# **DREAMS CEILING REPAIRS**

**PB-IH-0120.1**

## **TABLE OF CONTENTS**

ADVERTISEMENT  
BIDDER'S CHECKLIST  
SPECIAL NOTICE TO ALL BIDDERS  
AFFIDAVIT AND CERTIFICATION OF NON-COLLUSION

GENERAL PROVISIONS  
CONTRACT  
PROPOSAL

PAGE G-1 – G-22  
PAGE C-1 – C-18  
PAGE P-1 – P-6

ADVERTISEMENT FOR BIDS  
CITY OF WILMINGTON, NC  
**DREAMS CEILING REPAIRS**  
CONTRACT NUMBER: **PB-IH-0120.1**

Pursuant to North Carolina General Statute 143-129, sealed proposals addressed to the Purchasing Manager, PO Box 1810, 305 Chestnut Street, 5<sup>th</sup> Floor, Wilmington, NC 28402, and marked "DREAMS CEILING REPAIRS" will be received until 3:00 p.m., Tuesday, February 4, 2020 at which time they will be publicly opened and read at the Purchasing Division, 305 Chestnut Street, 5<sup>th</sup> Floor, Wilmington, NC. The City will receive SINGLE PRIME BIDS ONLY for this project.

Project Description: Reconstruction & Repair of the warehouse ceiling destroyed in Hurricane Florence. Located at 901 Fanning Street

- **Construction must be completed between February 10 – May 1, 2020 – this is a mandatory requirement.**

All firms submitting bids for the proposed work must be properly licensed under Chapter 87, NC General Statutes. The bidder's license number must appear on the outside of the envelope.

**A MANDATORY Pre-Bid Conference will be held at 2:00 p.m., JANUARY 23, 2020 onsite at 901 FANNING STREET, Wilmington, NC.** All parties interested in the project are invited to attend.

Plans, Specifications and Bid Documents are available for review and/or pick up at the Office of the Purchasing Manager, 305 Chestnut Street, 5<sup>th</sup> Floor, Wilmington, NC. If you would like the bid documents mailed to you, a Fed-Ex number must be provided. Potential subcontractors may secure a list of potential prime contractors from the Purchasing Manager at the above address.

The City of Wilmington does not discriminate on the basis of race, sex, color, age, national origin, religion or disability in its employment opportunities, programs, services, or activities.

Bids for this project shall be guaranteed by all bidders for a period of 90 calendar days following the bid opening.

THE CITY OF WILMINGTON RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.

Daryle L. Parker  
Purchasing Manager  
January 16, 2020

## **BIDDER'S CHECKLIST**

1. READ AND UNDERSTAND ALL SPECIAL NOTICES.
2. SIGN AFFIDAVIT OF NON-COLLUSION A-1 AND A-2.  
HAVE THIRD PARTY NOTARIZE PAGE A-3\*
3. COMPLETE THE PROPOSAL SECTION AND SIGN.\*
4. ALL ADDENDA ISSUED FOR THIS PROJECT HAVE BEEN SIGNED OR ACKNOWLEDGED ON THE PROPOSAL PAGE.
5. BID ENVELOPE SEALED AND MARKED WITH THE BIDDERS NAME, LICENSE NUMBER, PROJECT NAME AND NUMBER. NOTE: MULTIPLRIME AND SINGLE PRIME BIDS FROM THE SAME BIDDER MUST BE IN SEPARATE CLEARLY MARKED ENVELOPES.
6. ENVELOPE ADDRESSED AND MARKED:  
PURCHASING MANAGER  
CITY OF WILMINGTON  
PO BOX 1810  
305 CHESTNUT STREET, 5th FLOOR  
WILMINGTON, NC 28402-1810  
BID NAME: \_\_\_\_\_
7. THE BID MUST BE MAILED OR DELIVERED TO THE ABOVE ADDRESS SO THAT RECEIPT IS PRIOR TO THE TIME AND DATE OF THE BID OPENING. BIDS RECEIVED AFTER THE SPECIFIED TIME WILL NOT BE CONSIDERED. THE CITY OF WILMINGTON ASSUMES NO RESPONSIBILITY FOR MAIL DELIVERY.

\* Failure to complete these items and submit with the bid document may be cause for rejection of the Bid.

SPECIAL NOTICE TO ALL BIDDERS

MARCH 23, 1990

1. Bid Rigging Affidavit

**In accordance with the City of Wilmington's Bid Rigging and Conflict of Interest Ordinances, an Affidavit and Certificate of Non-Collusion and Non-Suspension is enclosed, Pages A-1, A-2 and A-3. The affidavit must be properly filled out, sealed and attested in order for your bid to be considered.**

2. Subletting

Paragraph G-1.15, SUBLETTING OR ASSIGNMENT OF CONTRACT, of the City's General Specifications. All bidders must submit with their bid a listing of subcontractors contacted to submit proposals for this project. The listing must indicate the subcontractors to be used, the dollar amount of the proposed subcontract work, and type of work to be performed. If no subcontractors are to be utilized, this must be specified. This must be submitted at the time of the bid opening in order for the bid to be considered.

If subcontract firms are contacted but their proposals rejected for any reason the bidder must complete the justification form included in the bid document.

3. Bid Documents

The City reserves the right to waive any immaterial defects in the bid documents.

4. Federal Funding

This project may be funded in whole or in part with Federal funds and all bidders are advised to pay strict attention to the Federal requirements which may be attached. Bid packages which include Affirmative Action under Section 3 require that each bidder submit with his bid an Affirmative Action Plan. The City will not require bidders to submit their plan with the bid. However, it will be required and must be submitted by the lowest responsible bidder and approved by the City prior to beginning work.

**Paragraph 4 applies only if Federal Regulations are included in the Bid Documents.**

If you have any questions concerning these requirements, please contact my office.

Daryle L. Parker  
Purchasing Manager

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AFFIDAVIT AND CERTIFICATE OF  
NON-COLLUSION, NON-SUSPENSION AND NON-CONVICTION

The undersigned, being first duly sworn, deposes and says:

1. I understand that for the purposes of this affidavit, the term "bidder" shall include the person(s), firm(s), or corporation(s) signing this affidavit, the undersigned's subcontractor(s), subsidiary(ies) and affiliate(s) and any officer, director, employee or agent of the bidder; and the term "conviction" shall include guilty pleas, pleadings of nolo contendere and similar pleas.

2. This Affidavit and Certificate is made in accordance with Article 3 of Chapter 133 of the North Carolina General Statutes; I certify that this proposal is made without prior understanding, agreement, or connection with any person(s), firm(s), or corporation(s) making bids or proposals; I further certify that the bidder has not entered into any agreement with any other bidder or prospective bidder or with any other person(s), firm(s) or corporation(s) relating to the price named in said proposal, nor any agreement or arrangement under which any person(s), firm(s) or corporation(s) is to refrain from bidding, nor any agreement or arrangement for any act or omission in restraint of free competition among bidders; I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards; and I further certify that the bidder will abide by all terms of this bid or proposal.

3. The bidder is not suspended or debarred from bidding by any federal or state governmental agency that is providing funds for this contract.

4. The bidder is not presently charged in an indictment or information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or any similar charges in any federal court or a court of this or any other state.

5. The bidder, within one year immediately preceding the date of this affidavit, has not been convicted of charges or engaging in any conspiracy, combination, or other unlawful act in restraint of trade or similar charges in any federal court or a court of this or any other state.

6. If, during the time of this proposal, from the date advertised to the date bids are opened, the bidder is indicted or convicted of bid-rigging, I understand this proposal shall be rejected and not considered for award.

7. I hereby affirm that all information contained in this affidavit is true, correct, accurate and complete, and any untrue, incorrect, inaccurate or incomplete statements will result in the disqualification and rejection of this proposal. I certify that I am authorized to sign this bid and to make the representations set forth herein on behalf of myself and the bidder.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

COMPANY NAME \_\_\_\_\_

BY: \_\_\_\_\_  
(Owner, Partner, or Corporate President, Vice  
President or Assistant Vice President only)

ATTEST:

\_\_\_\_\_  
(Secretary, Assistant Secretary,  
Cashier or Assistant Cashier only)

(CORPORATE SEAL)

(TO BE EXECUTED ON BEHALF OF THE CONTRACTOR)

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

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

I, \_\_\_\_\_, a Notary Public, certify that  
(Name)

\_\_\_\_\_ personally came  
(Name of Secretary, Assist. Sec., Cashier, Assist. Cashier)

before me this day and acknowledged that he (she) is \_\_\_\_\_  
(Secretary, Assist. Sec.,

\_\_\_\_\_ of \_\_\_\_\_, a  
Cashier, Assist. Cashier) (Name of Corporation)

corporation, and that by authority duly given and as the act of the corporation, the foregoing Affidavit was signed in its name by its \_\_\_\_\_,  
(President, Vice President, Assist. Vice President)

sealed with its corporate seal, and attest by himself (or herself) as its

\_\_\_\_\_  
(Secretary, Assist. Sec., Cashier, Assist. Cashier)

WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020

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

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

(NOTARY SEAL)



GENERAL PROVISIONS  
Section G

INSTRUCTION TO BIDDERS

SPECIAL NOTICE

- G-1.01 The name of a certain brand, make, manufacturer, or definite specification is to denote the quality standard of the article desired, but does not restrict bidders to the specific brand, make, manufacturer, or specification named; it is to set forth and convey to the prospective bidders the general style, type, character, and quality of the article desired.
- G-1.02 The award of each contract will be made to the lowest responsible bidder as soon as practicable; provided, that in the selection of equipment or materials a contract may be awarded to a responsible bidder other than the lowest in the interest of standardization, or if ultimate economy is clearly evident.

If the project is being bid under the single and multiprime bidding methods, the CITY reserves the right to award the contract in whichever manner is in the best interest of the CITY taking into consideration the total cost of the project, including but not limited to contract administration and preparation costs.

The award of the contract represents a preliminary determination as to the qualifications of the bidder, the availability of funds for the project, and other matters precedent to the City's execution of the contract. No legally-binding acceptance of the offer set forth in the Contractor's bid occurs until the City executes the contract.

- G-1.03 If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, he may submit to the Engineer/Project Manager a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. An interpretation of the proposed documents will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The City of Wilmington will not be responsible for any other explanations or interpretations of the proposed documents.

GENERAL SPECIFICATIONS

- G-1.04 **SEALED PROPOSALS REQUIRED: INSTRUCTIONS:** In accordance with the attached copy of advertisement and the following specifications, proposals will be received by the City Council of the City of Wilmington, North Carolina, at 305 Chestnut Street, Purchasing Manager's Office, on the date and time designated in the Advertisement, when they will publicly open and read the proposals properly submitted for Municipal Improvements in the City of Wilmington, North Carolina. Firms submitting single and multiprime bids must enclose these in separate sealed, clearly marked envelopes.

If bids are requested for single and multiprime contracts, bids will be received, but not opened, for the separate prime contracts one (1) hours prior to the deadline for submission of single prime bids. All bids will be opened at the time for receipt of the single prime bids.

G-1.04.1 Proposals must be placed in a sealed envelope and addressed to The Purchasing Manager, City of Wilmington, North Carolina. The envelope shall show the name and address of the bidder and be plainly marked to show the project name and number and section (if applicable), as given in the Advertisement. The envelope must also be marked on the face to

show the Contractor's North Carolina Contractor's License Number. Bid forms are contained in this bound copy of the Contract Documents, copies of the proposal pages may be submitted. All information entered on proposal forms must be original and in ink. Submission of the entire document is not required. However, bidders are cautioned to submit all required forms, as referenced in the bound document, properly signed with the sealed bid. Bid forms will be filled in and completed in all respects as required herein.

Firms submitting bids for Single and Multi-Prime bids on the same project must submit each bid to the Purchasing Manager in a separate, properly identified sealed envelope

**Failure by the bidder to properly complete the Bid Proposal, Affidavit of Non-Collusion forms or other documents will be cause for declaring the bid non-responsive and cause for rejection.**

G-1.04.2 Bid Bond: DELETED

G-1.04.3 No bid may be withdrawn for a period of ninety (90) days after being filed.

G-1.04.4 The work contemplated in these specifications, and the prices named in the proposals will be considered to include all cost of supplying, delivering, and all labor necessary for the incorporation of all materials into the work, and the use of all tools, machinery and equipment of every name and description that is used in carrying out the plans and specifications under this contract.

G-1.04.5 Bidders are cautioned to carefully examine the proposed location of work, as well as the plans and specifications, and to go over the whole project thoroughly with the Engineer/Project Manager before submitting their bids. It is understood and agreed that the quantities in the specifications, or as shown on the plans are approximate only, and no claim will be made against the City Council for any excess or deficiency, and no allowance will be made for the failure of the bidder to estimate correctly the difficulties attending the execution of the work.

G-1.04.6 Bidders are cautioned to adhere strictly to the spirit of the specifications in submitting their tenders, and it will be considered bad form to submit a proposal, expecting concessions after being awarded the contract by proposing the use of inferior materials and methods of construction for cheapening the work. The Engineer/Project Manager, Owner, or City desires to aid the Contractor in every legitimate way to carry on the work economically and expeditiously as set out in these specifications, and no alternate bids will be allowed unless requested in the proposal.

G-1.04.7 Where bids are received on Unit Prices, the City Council reserves the right, to authorize an increase of fifty percent (50%) of the amount of work set out in the proposal, or to decrease it to an extent equal to fifty percent (50%) of actual cost of the original work predicted on the unit prices given in the proposal. Such increase or decrease shall not vitiate or annul the contract agreement hereinafter entered into. In the event of a discrepancy in the unit prices and the extended prices the unit prices shall prevail.

G-1.04.8 The bidder shall be required to produce substantial evidence that he is properly qualified to carry on the work as set out in the specifications. The qualifications required of all bidders are as follows: Thorough knowledge and experience in work of this character; labor and equipment in such quantities and quality as to enable the Contractor to carry on the work economically and expeditiously; financial condition must be such as not to require aid from the City Council, other than the regular monthly estimates.

G-1.04.9 The City Council will not consider any bid or award of contract to any person, firm, or corporation, who has defaulted in any obligation to the City of Wilmington, or who, in the opinion of the Council, failed to perform his work satisfactorily as to character or time.

G-1.04.10 The City reserves the right to reject any and all bids, or to accept the bid, or bids on the entire project, or any section of the project, as given in the Proposal, which, in its opinion, is to the best interest of the City.

G-1.04.11 The Contractor's attention is especially called to the fact that he will be requested by the Council, and will be expected to push this work with all speed possible.

G-1.05 CONTRACT SURETY OF PERFORMANCE BOND: DELETED

G-1.06 INSURANCE REQUIREMENTS: Before commencing any work, the Contractor shall procure insurance in the contractor's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed in Section G. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the contractor, his agents, representatives, employees, or subcontractors, whether such operations by himself/herself or anyone directly or indirectly employed by him/her.

G-1.06.1 COMMERCIAL GENERAL LIABILITY: Contractor shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$1,000,000 each occurrence \$2,000,000 aggregate for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit. CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The City of Wilmington, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 or CG 20 33 **AND** CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the contractor; products and completed operations of the contractor; premises owned, leased or used by the contractor; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to the City of Wilmington, its officers, officials, agents, and employees.

There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, or damage to the named insured's work, when those exposures exist.

The contractor's Commercial General Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the contractor's insurance.

The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the contractor for the City of Wilmington.

**G-1.06.2 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:** Contractor shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance. The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit.

The insurer shall agree to waive all rights of subrogation against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the contractor for the City of Wilmington.

The U.S. Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways. The Maritime Coverage endorsement (WC 00 02 01) shall be attached to the policy when the contracted services involve the use of watercraft.

**G-1.06.3 BUSINESS AUTO LIABILITY:** Contractor shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached when those exposures exist.

Contractor waives all rights against the City of Wilmington, its officers, officials, agents and employees for recovery of damages to the extent these damage are covered by the business auto liability or commercial umbrella liability insurance obtained by Contractor pursuant to G-1.06.03 of this agreement.

The contractor's Business Auto Liability insurance shall be primary as respects the City of Wilmington, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, and employees shall be excess of and not contribute with the contractor's insurance.

**G-1.06.4 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE:**  
DELETED

**G-1.06.5 BUILDERS RISK INSURANCE:** Contractor shall purchase and maintain in force builders risk insurance on the entire work. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum, subject to subsequent modifications of the contract sum. The insurance shall apply on a replacement cost basis.

Builders Risk Insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form (CP 10 30) and shall be endorsed as needed to provide full coverage for loss or damage from collapse including collapse resulting from design error. Builders Risk Insurance shall include coverage for flood, when that exposure exists.

Contractor shall purchase and maintain boiler and machinery insurance required by the contract documents or by law, covering insured objects during installation and until final acceptance by the City of Wilmington. This insurance shall name as insureds the City of Wilmington, Contractor, and all subcontractors and sub-subcontractors in the work. In lieu of this separate

policy, the contractor may have the boiler and machinery exclusion removed from the builder's risk policy.

Builders Risk insurance shall name as insureds the City of Wilmington, Contractor, and all subcontractors and sub-subcontractors in the work. Builders Risk insurance shall cover the entire work at the site identified in this agreement and when applicable include reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation.

The insurance as required in this section shall be maintained in effect, unless otherwise provided for in the contract documents, until the earliest of the following dates:

- a. The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;
- b. The date on which final payment, has been made;
- c. The date on which the insurable interests in the property of all insureds other than the City of Wilmington have ceased.

If the City of Wilmington is damaged by the failure of Contractor to maintain Builders Risk or Equipment Breakdown, then Contractor shall bear all reasonable costs properly attributable to that failure.

The City of Wilmington and Contractor waive all rights against each other and each of their subcontractors, sub-subcontractors, officers, officials, agents and employees for recovery of damages caused by fire and other perils to the extent covered by builders risk insurance purchased pursuant to this section, or any other property insurance applicable to the work.

If the builders risk insurance and other property insurance policies purchased as required above do not allow the insured to waive rights of recovery against others prior to loss, Contractor shall cause them to be endorsed with a waiver of subrogation as required above.

Partial occupancy or use of the work shall not commence until the insurance company or companies providing Builders Risk insurance have consented to such partial occupancy or use. The City of Wilmington and Contractor shall take reasonable steps to obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse, or reduction of insurance.

**G1-1.06.6 DEDUCTIBLES AND SELF-INSURED RETENTIONS:** The contractor shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of Wilmington is an insured under the policy.

**G1-1.06.7 MISCELLANEOUS INSURANCE PROVISIONS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to the City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.
2. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

G1-1.06.8 ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by the City of Wilmington.

G1-1.06.9 EVIDENCE OF INSURANCE: The Contractor shall furnish the City of Wilmington with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in Section G1-1.06. This Certificate shall be in six (6) counterparts and, when the contract is signed by the Contractor, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents.

With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to the City of Wilmington with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

G1-1.06.10 SUBCONTRACTORS: Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent contractors' coverage, and the contractor shall be responsible for assuring that all subcontractors are properly insured.

G1-1.06.11 CONDITIONS:

1. The insurance required for this contract must be on forms acceptable to the City of Wilmington.
2. The contractor shall provide that the insurance contributing to satisfaction of insurance requirements in Section I. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the contractor without prior written approval of the City of Wilmington.
3. The contractor shall promptly notify the Safety & Risk Manager at (910) 341-5864 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.
4. The City of Wilmington reserves the right to obtain complete, certified copies of all required insurance policies, at any time.
5. Failure of the City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
6. By requiring insurance herein, the City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the Contractor and such coverage and limits shall not be deemed as a limitation of Contractor's liability under the indemnities granted to the City of Wilmington in this contract.
7. The City of Wilmington shall have the right, but not the obligation of prohibiting Contractor or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Wilmington.

G-1.07 DELETED

G-1.08 DELETED

G-1.09 DELETED

G-1.10 DELETED

G-1.11 PAYMENT OF EMPLOYEES: The Contractor, and each of his Sub-contractors, shall pay each of his employees, engaged in work on this project, in full (less deductions made mandatory by law) not less often than on the Contractor's regular pay days, which shall be normally each week.

G-1.12 PAYMENT: Payment by the City to the Contractor will be made under either one of the following procedures:

G1.12.1 Public Construction Contracts equal to or greater than one hundred thousand dollars (\$100,000)

- A. The City shall retain five percent (5%) of any periodic payment due a Contractor.
- B. When the project is fifty percent (50%) complete, the City, with written consent of the surety, may elect to not retain any further retainage from periodic payments due the Contractor if the Contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the Architect, Engineer/Project Manager, or City has been corrected by the Contractor and accepted by the City Engineer/Project Manager, Architect, Engineer/Project Manager, or Project Manager. If the City determines the Contractor's performance is unsatisfactory, the City may reinstate retainage for each subsequent periodic payment application up to the maximum amount of five percent (5%). The project shall be deemed fifty percent (50%) complete when the Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete.
- C. 50% complete means:
  - Gross project invoices, excluding material stored off site, of the value of the contract
  - The value of materials stored on-site shall not exceed 20% of the gross project invoices

G-1.12.2 PAYMENT ON UNIT PRICE CONTRACTS: Not later than 30 work days after receipt of a City approved invoice the City will make partial payment to the Contractor, on the basis of a duly certified approved estimate by the City Engineer/Project Manager, Project Architect or City Project Manager of the work performed during the preceding calendar month by the Contractor, in accordance with item 12.1.1 above.

G-1.12.3 PAYMENT ON LUMP SUM CONTRACTS, THIRTY DAYS OR MORE IN DURATION: Not later than 30 work days after receipt of a City approved invoice and acceptance of work performed during that period, the City will make partial payment to the Contractor on the basis of a duly certified approved estimate by the City Engineer/Project Manager, Architect, Designer or Project Manager of the work performed during the preceding calendar month by the Contractor, and the value of the materials on the job, but not installed. The City will retain five percent (5%) of the amount of each such estimates in accordance with item 12.1.1 above.

For purposes of preparing these monthly estimates, after the execution of the Contract, the Contractor will be required to submit to the City Engineer/Project Manager, Architect, Designer

or Project Manager a breakdown of his lump sum bid in sufficient detail to permit an accurate determination of the progress of the work.

G-1.12.4 UNSATISFACTORY PERFORMANCE AND RETAINAGE: Retainage of the maximum of 5% may be reinstated if performance of the Contractor is unsatisfactory as determined by the City.

G-12.5 Within 60 days after the submission of a pay request and one of the following occurs, as specified in the contract documents, the owner with written consent of the surety shall release to the contractor all retainage on payments held by the owner: (i) the City receives a certificate of substantial completion from the Project Manager, Architect, Engineer, or Designer in charge of the project; or (ii) the owner receives beneficial occupancy or use of the project. However, the City may retain sufficient funds to secure completion of the project or corrections on any work. If the City retains funds, the amount retained shall not exceed two and one-half (2 ½) times the estimated value of the work to be completed or corrected. Any reduction in the amount of the retainage on payments shall be with the consent of the contractor's surety.

G-1.12.6 Release of Retainage shall be in accordance with G.S. 143-134.1.

G-1.12.7 There will be no retainage on periodic or final payments made by the City or prime contractor on public construction contracts in which the total project costs are less than one hundred thousand dollars (\$100,000).

G-1.12.8 PAYMENT ON LUMP SUM CONTRACTS, THIRTY DAYS OR LESS IN DURATION: Where the time for completion of work, as stated in the proposal, is thirty (30) calendar days, or less, the City will make one payment in full upon completion of work and acceptance by the City Council. No partial or interim payments will be made.

G-1-12.9 The Prime contractor and all Subcontractors working on the project shall comply with G.S. 143-134.1 in regards to payments to all subcontractors

G-1-12.9 Nothing in this section shall prevent the City from withholding payment to the contractor in addition to the amounts authorized under G.S. 143-134.1 for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

G-1.12.10 Payment to Subcontractors by Prime Contractor or General Contractor

In accordance with N.C. Gen. Stat. § 22C, within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work satisfactorily completed or service satisfactorily provided under the subcontract. Additionally, the Contractor shall pay the undisputed portions of subcontractors' invoices within one hundred five (105) calendar days of the date of subcontractor's invoice, independent of any payment by the City to the Contractor. If the Contractor withholds any retainage pending final completion of any subcontractor's Work, the Contractor is required to pay the retainage so withheld within seven (7) calendar days after such subcontractor completes his Work satisfactorily, regardless of any payment of retainage by the City to the Contractor. The Contractor's failure to pay subcontractors as provided herein shall be a material breach for which the City may cancel the Contract.

If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on unpaid balance as may be due.



A subcontract on a contract governed by this section may include a provision for the retainage on periodic payments made by the prime contractor to the subcontractor. However, the percentage of the payment retained: (i) shall be paid to the subcontractor under the same terms and conditions as provided to the Prime Contractor and shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Subject to section G-1.12.4, any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

Nothing in this section shall prevent the prime contractor at the time of application and certification to the City from withholding application and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the owner.

The Prime contractor shall comply in all respects with G.S. 143-134.1 in all manners in payments to any and all subcontractors.

Neither the City's nor contractor's release of retainage on payments as part of a payment in full on a line-item of work shall affect any applicable warranties on work done by the contractor or subcontractor, and the warranties shall not begin to run any earlier than either the owner's receipt of a certificate of substantial completion from the architect, Engineer/Project Manager, or designer in charge of the project or the owner receives beneficial occupancy.

G-1.13 COMMENCEMENT AND COMPLETION OF WORK: The Contractor for the construction of improvements under this contract shall commence work under his contract within ten days after written notice by the City PURCHASING MANAGER, and shall fully complete all work thereunder within the time stated in the proposal form.

G-1.14 EXISTING CONDITIONS: The Contractor, in signing this contract, acknowledges that he has read these Specifications and is familiar with their terms; that he has studied the plans and drawings, which are entirely clear to him; that he has been over the ground where the work is to be done, and has fully acquainted himself with the existing conditions; that he is fully prepared to sustain all losses or damages incurred by the action of the elements, or from any unforeseen obstructions, or encumbrances that may be encountered in the prosecution of the work; is prepared to provide the necessary tools, appliances and machinery, skilled and unskilled labor and materials of all kind as specified, and to guarantee that on completion, all work will be in strict compliance with the plans and specifications.

G-1.15 SUBLETTING OR ASSIGNMENT OF CONTRACT: The Contractor shall keep the work under his own control, and shall not assign, by power of attorney, or otherwise, nor sublet the work or any part thereof, without the written consent of the City. The Contractor shall perform on the site and with his own organization work equivalent to at least thirty percent (30%) of the work to be performed under this Contract. If, during the progress of the work hereunder, the Contractor requests a reduction of such percentage, and the City Manager determines that it would be to the City's advantage, the percentage of the work required to be performed by the Contractor's own organization may be reduced; provided prior written approval of such reduction is obtained by the Contractor from the City Manager. The Contractor shall submit in writing the name of such subcontractor as he intends employing, the portion of the work which he is to do, the dollar amount of the work, his place of business, and such other information as the City may require, in

order to know whether said subcontractor is reputable, reliable and able to properly perform the work he proposes to do. Also, with respect to each subcontractor, the Contractor shall either submit certification by his insurance carrier that such subcontractor is covered under the provisions of his policy, or submit a certificate from the subcontractor's insurer that the subcontractor is covered, in accordance with Paragraphs G-1.05 through G-1.10, inclusive.

The Contractor shall not, either legally or equitably, assign any of the monies payable under this Contract, or his claim thereto, except by consent of the City.

Written consent by the City to sublet or assign any portion of the contract shall not be construed to relieve the Contractor, or surety, of any responsibility for the fulfillment of the Contract.

#### INTENT OF SPECIFICATIONS

G-1.16 INTENT: The intent of these specifications is to provide for the work herein enumerated to be constructed of the best materials of their respective kinds, and perfectly suited to the work contemplated. The work to be fully completed in every detail for the purpose designed, and it is hereby understood that the Contractor, in accepting this contract, agrees to furnish skilled labor, and everything necessary to complete the work in a workmanlike and satisfactory manner.

G-1.17 CONTRACT: In order that the contractor may understand the scope of the work to be performed and the details of its construction, several documents have been prepared, and it is understood and agreed by and between the contracting parties that the following documents form, and are essential parts of the complete contract: Advertisement, Information for Bidders, General and Technical Specifications, Proposal, Specific Contract, Drawings, Plans, Maps, attached or herein described, and others that may be prepared from time to time governing and illustrating the work to be done under the terms of the contract, and all of which shall have the same weight as if embodied herein.

G-1.18 SPECIFICATIONS: The General Provisions of the Specifications give in detail the duties and obligations of the two parties to the contract, the procedure of the work, and manner in which payments are to be made under the contract. The Technical Specifications, following, give in more detail the characteristics and requirements of the several classes of materials and special instructions governing the methods of construction. Where there is conflict, the Technical Specifications shall always take precedence over the General Specifications.

#### DEFINITIONS

G-1.19 DEFINITIONS: Wherever in the Specifications, Proposal, or Contract, the following terms, pronouns, or abbreviations used in their stead, occur, the intent and meaning shall be interpreted as follows:

A. N. S. I.  
American National Standards Institute

A. S. T. M.  
American Society for Testing and Materials

A. W. S.  
American Welding Society

A. W. W. A.  
American Water Works Association

A. A. S. H. T. O.  
American Association of State Highway and Transportation Officials

**Bid Proposal**  
Written offer submitted by the bidder in the required manner to perform the work contemplated.

**Bidder**  
The person, or persons, partnership, firm or corporation submitting a proposal for the work contemplated.

**Change Order**  
A written order from the Engineer/Project Manager signed by the Contractor and the City of Wilmington authorizing addition, deletion or revision in the work or an adjustment in the price or time for completion. All change orders must be approved by the City Manager and all change orders exceeding \$5,000.00 must be approved by the Wilmington City Council.

**City**  
The word City in these specifications refers to the City of Wilmington, North Carolina, the party of the second part to the contract, also referred to herein as the "Owner".

**City Council or Council**  
The word Council, or City Council, refers to the City Council, the governing body of the City of Wilmington.

**Contractor**  
The person, or persons, partnership, firm or corporation who enters into the contract awarded him by the City.

**Drawings**  
All drawings, or reproductions thereof, pertaining to the construction of the work, which are approved by the Engineer/Project Manager for such purpose.

**Engineer/Project Manager**  
The word Engineer/Project Manager, as used in these specifications, refers to the consulting Engineer/Project Manager whose name appears on the drawings and/or to the City Engineer/Project Manager, and to his or their properly authorized assistants, limited to the duties entrusted to them.

**Extra Work**  
A written order to the Contractor, signed by the Engineer/Project Manager, ordering a change in, or an addition to the work done, from that originally shown by the drawings and specifications. An authorized Change order shall be issued for this work.

**F. S.**  
Federal Specifications

**General Specifications**  
All requirements and provisions contained in this document.

**N. C. S. H. C. or N. C. H. C. Specifications**

North Carolina State Highway Commission, Raleigh, North Carolina, and to their "Standard Specifications of Roads and Structures," latest edition.

#### Phrases

Wherever, in the specifications, or upon the drawings, the words "As required", "As permitted", or words of like import are used, it shall be understood that the direction, requirements, or permission of the Engineer/Project Manager is intended; and similarly the words "approved", "acceptable" and "satisfactory", or words of like import shall mean approved, acceptable, or satisfactory to the Engineer/Project Manager.

#### Request for Contract Payment

The form supplied by the City and completed by the Contractor to request periodic payments on the contract.

#### Special Provisions

Statements modifying or changing the requirements or provisions of the General Specifications, or adding new requirements or provisions thereto.

#### Specifications

The General Specifications, Special Provisions, and all written or printed agreements and instructions pertaining to the performance of the work, and to the quantity and quality of the materials to be furnished under the contract.

#### Standard Details

The Standard Detail drawings, or reproductions thereof, which pertain to the standard method of construction of the work, and which are approved by the Engineer/Project Manager.

#### Surety

The corporate body which is bound with and for the contractor, that is primarily liable with the contractor, for the acceptable performance of the contract and for the completion of the work.

## THE DUTIES AND AUTHORITY OF THE ENGINEER/PROJECT MANAGER-DEFINED

G-1.20 INTERPRETATIONS AND CORRECTIONS: It is agreed by and between the contracting parties that the Engineer/Project Manager shall make all necessary explanations as to the meaning and intent of these specifications, and correct any errors, discrepancies or omissions that occur in the plans and specifications; it is further agreed that the Engineer/Project Manager shall, in all cases, determine the amount, quality, acceptability, and fitness of the several classes of work which are to be paid for under the contract; and it is also agreed that the Engineer/Project Manager shall act as referee upon all questions arising between the parties of this contract; and in all differences that occur between contractors working on adjoining sections concerning the work to be done under the terms of the contract, and the Engineer/Project Manager decision shall be final and binding.

G-1.20.1 INTERPRETATIONS OF PLANS AND/OR SPECIFICATIONS PRIOR TO RECEIPT OF BIDS: If any prospective bidder feels that there are items within the plans or specifications, in the work proposed, or upon the site contemplated, which need clarification or interpretation, he shall, prior to the date and time for the receipt of bids, address a written statement to the Engineer/Project Manager, covering the points which he feels need clarification. It shall be the responsibility of the person addressing the inquiry to see that such a request is in the hands of the Engineer/Project Manager in sufficient time for proper consideration and answer. Upon receipt of such a written request, the Engineer/Project Manager will make a determination and if, in his opinion, interpretation, clarification and/or change should be made in the plans and/or specifications, he will inform each holder of the plans and specifications in writing of his decision or findings in the matter in question. No other procedure will be followed in interpretation or addendum to these specifications, and the City of Wilmington will not be responsible for any change unless made in accordance with this procedure.

**Questions related to the proposed project, including questions concerning the plans and specifications will be addressed by the City or Engineer/Project Manager up to Seven (7) calendar days prior to the bid opening. No addenda will be issued after this time.**

G-1.21 FIELD WORK: The Engineer/Project Manager shall give all necessary base lines and bench marks and information of like character for the guidance of the contractor, and all the work shall accurately conform thereto. Any work done without established lines, grades, may be ordered removed and replaced, without additional expense to the City.

G-1.22 INSPECTION: All materials and workmanship will be inspected by the Engineer/Project Manager, and the Contractor will be held to the spirit of the specifications at all times, the intent of such inspection being simply to obtain work of a high character, and one in which both parties to the contract can take pride.

G-1.23 ALTERATIONS: It is agreed by the contracting parties that the Engineer/Project Manager may at all times, before or after the commencement of the work, make alterations, or changes in the location, alignment, grades, materials and methods of construction that is desired, regardless of whether the location of such work be as shown on the plans upon which bids have been invited, and such change shall not vitiate or annul this contract, but the Engineer/Project Manager will determine the value of said work, and should such change diminish the amount of work to be done, no claim shall be made by the Contractor for damages on the grounds of anticipated profits from the part disposed with, but should the plan of a particular piece of work be altered or changed after commencement of said work and result in extra cost to the Contractor, the Engineer/Project Manager shall determine and certify a fair equitable value therefor, and his decision shall be final and binding.

G-1.24 INSPECTORS: Should it be found necessary, in the opinion of the Engineer/Project Manager, to appoint inspectors to pass upon the quality, amount, and general character of the work and the

materials incorporated therein, such person, or persons, who, in the opinion of the Engineer/Project Manager, are deemed competent, may be appointed. The duties of this office are purely supervisory, and their decisions are subject to review by the Engineer/Project Manager.

#### EXTRA WORK

G-1.25 EXTRA WORK: The Contractor shall do any work not otherwise herein provided for when, and as ordered by the Engineer/Project Manager in writing by himself or specially authorized assistants. In the event that a mutually agreed price is not arrived at prior to the accomplishment of this extra work, the Contractor shall keep a strict account of the labor, equipment, and material used on said extra work, and shall give the Engineer/Project Manager an itemized statement each day of the amount. He shall further furnish the Engineer/Project Manager with bills, accounts and vouchers relating to the cost and access to all accounts concerning this work.

G-1.25.1 Request for reimbursement for Extra Work must be submitted by the Contractor within ten (10) days of the date upon which such extra work is accomplished, and subject request for reimbursement must bear on its face the authorizing number of the written order issued by the Engineer/Project Manager.

G-1.25.2 No request for reimbursement on account of additional work will be honored by the Engineer/Project Manager unless previously authorized by him in the manner stated.

G-1.26 PROTECTION: When such work is being carried on under the written instructions of the Engineer/Project Manager, and the work is damaged from whatever cause due to the carelessness or neglect of properly protecting it, or the use of improper materials, or inferior workmanship, such part thereof as the Engineer/Project Manager directs shall be removed and replaced by the Contractor at his own expense.

G-1.27 PAYMENT: For all such extra work, as authorized under the terms of Paragraph G-1.25, where it is possible for the Contractor and the Engineer/Project Manager to arrive at a mutually agreeable price (either lump sum or unit price) for this extra work in advance of the actual accomplishment of said work, this price may be used. In the event that this is not possible or practicable, the Contractor shall receive the reasonable cost of said work, plus ten percent (10%) of such cost. The decision of the Engineer/Project Manager shall be final upon all questions of the amount and value of extra work. The Engineer/Project Manager will include in such valuation the cost to the Contractor of all materials used, all labor, Social Security and insurance on labor only, common and skilled, labor foremen, and the fair rental of all machinery used for the period of such use. The Engineer/Project Manager will not include in this valuation any cost or rental of small tools, buildings, any portion of the time of the Contractor or superintendent, clerical help, overhead expenses or any allowance for the use of capital, these items being considered as covered by the ten percent (10%) added to the reasonable cost.

G-1.28 TIMEKEEPER: The Engineer/Project Manager shall have the right to appoint a timekeeper to represent the City on extra work, and the Contractor shall furnish him all necessary facilities for obtaining a correct record of the time and the materials incorporated in the work. The Engineer/Project Manager shall have the right to designate what force shall be employed, the compensation therefor and the foreman shall be approved by the Engineer/Project Manager.

#### GENERAL INSTRUCTIONS

G-1.29 OBSERVANCE OF THE LAW: In all operations connected with the work, the Contractor shall observe and obey all the precepts of the law, the ordinances and regulations of the Federal, City, County and State. The Contractor shall provide and maintain such barriers, signals, red lights, and watchmen to effectually prevent any accident in consequence of the work, and the Contractor

shall be responsible and liable for all damage to life or property occasioned in any way by his acts or that of his agents.

- G-1.30 **DISPOSITION OF CLAIMS:** In the event of injuries or damages to persons or property of any kind legally existing along, or adjacent to the work, the Contractor agrees to make repairs or payment for damages or injuries as may be necessary, and should the Contractor fail to promptly repair or satisfy any legal complication that arises, after being notified in writing by the Engineer/Project Manager, the right is conferred upon the CITY to deduct the cost thereof from any money due, or to become due, the Contractor under the terms of the contract. All claims arising under this contract shall be settled to the satisfaction of the Engineer/Project Manager within sixty (60) days after notification to the Contractor of such claims, unless proceedings are entered into in a court of law.
- G-1.31 **PATENTS:** Should the Contractor use any patented invention, article or contrivance in the construction or maintenance of the work, or any part thereof embraced in these specifications, the fee or royalty for the use of such patented article as aforesaid shall be included in the Contractor's proposal; and the Contractor agrees to hold the City harmless against any and all demands for such fees or royalties; and before final payment to the Contractor he shall furnish satisfactory evidence that all such claims have been settled.
- G-1.32 **PRIVATE PROPERTY:** The Contractor shall not enter, or occupy with men, tools, machinery and materials, any property except that under the control of the City without the consent of the Engineer/Project Manager, and then only with written consent of the property owner. A copy of this written consent shall be given, or mailed to the Engineer/Project Manager.
- G-1.33 **LAYING OUT THE WORK:** The Engineer/Project Manager will provide a base line for alignment purposes and a benchmark for vertical control. All construction offset stakes, forms, and batterboards shall be set by the contractor and are subject to review and approval by the Engineer/Project Manager, however, such approval of these items shall not relieve the Contractor of his responsibility to construct the work to the line and grade shown on the plans.
- G-1.34 **UNAUTHORIZED WORK:** Any work done without lines, levels and instructions having been given by the Engineer/Project Manager, or without the supervision of an Inspector, will not be estimated or paid for, except when such work is authorized by the Engineer/Project Manager. Work so done, without the authority of the Engineer/Project Manager, may be ordered removed and replaced at the Contractor's cost.
- G-1.35 **RESPECT FOR FIELD RECORDS:** The Contractor shall carefully preserve and maintain the proper position of all lines, stakes and grade boards until authorized to remove them. Any work that shows lack of alignment or grade where the Engineer/Project Manager control stakes are missing, or the position of the points, stakes, or grades indicate that they have been carelessly maintained, such work shall be removed and replaced at the Contractor's expense. If, in the opinion of the Engineer/Project Manager, the Contractor does not utilize reasonable care in preserving control stakes, he shall be required to pay for all expenses involved in the replacement of these stakes.
- G-1.36 **INSPECTION OF MATERIALS:** The Contractor shall furnish and deliver on the ground where it is to be used all materials suitable for the purpose intended. All materials and workmanship shall be subject to the Engineer/Project Manager's inspection, approval, or rejection at all times, and this inspection and approval during the progress of the work does not relieve the Contractor of repairs or renewal where the work has been damaged, proven defective, or overlooked, and on demand of the Engineer/Project Manager any work found not in conformity with the specifications shall be removed at once and replaced in accordance with the specifications.

- G-1.37 **WORKERS:** Only competent and skilled workers of each class shall be employed on the work, and if the Engineer/Project Manager notifies the Contractor that any common or skilled workers, including those superintending the work, are unfaithful, disobedient, disorderly, or unsatisfactory, such worker, or workers shall be taken off of this project not again employed upon the work without the consent of the Engineer/Project Manager.
- G-1.38 **PROSECUTION OF WORK:** The Contractor shall begin the work provided for under the terms of the contract within ten (10) days after written notice by the Purchasing Manager, and shall diligently prosecute and fully complete same within the time stated in his proposal. The Contractor shall prosecute the work in such manner, time and place as directed by the Engineer/Project Manager, and he shall carry out without delay all orders and instructions given by the Engineer/Project Manager. During the absence of the Contractor, a qualified representative shall have authority to direct the work and to receive orders and instructions from the Engineer/Project Manager; but this direction by the Engineer/Project Manager for prosecuting the work shall not relieve the Contractor of any of the obligations or liabilities assumed under the contract.
- G-1.39 **SANITATION:** Necessary sanitation conveniences for the use of workers employed upon the work shall be constructed and maintained by the Contractor, in strict accordance with the provisions of the City-County, and State Health Departments. The Contractor shall obey and enforce the aforesaid rules and regulations, including preventative measures where the workers have been exposed to infections and communicable diseases.
- G-1.40 **PUBLIC TRAFFIC:** The Contractor shall maintain, in a safe and practical way, the roadways that are now used by the public or individuals that neither may be unnecessarily delayed nor inconvenienced on account of the work being carried on by the Contractor. The Contractor will be responsible for all injuries, damages to persons or property incurred by such person, or persons, firm or corporation on account of the acts or claims of negligence by the Contractor to the aforesaid while passing over the public or private roadways. The Contractor will be required to repair, or make reparation for any damages that he may have caused to the roadways, public or private, immediately after discontinuing traffic along such route, or when authorized to do so by the Engineer/Project Manager.
- G-1.41 **BARRICADES AND LIGHTS:**
- G-1.41.1 Travel upon streets or any intersecting alley, street, or private driveway shall not be inconvenienced needlessly, nor shall any street or alley be wholly obstructed for more than two blocks at any one time, except in special cases where a greater distance may be allowed by the Engineer/Project Manager.
- G-1.41.2 Whenever a street is closed, the Contractor shall cause plainly worded signs, announcing such fact, to be placed with proper barricades at the nearest cross street upon each side of such obstruction, and upon intersecting streets.
- G-1.41.3 The Contractor shall also maintain sufficient warning lights during the hours of darkness in and about the work which is under way, and it is his full responsibility to see that such lights are lit and kept lit from sunset to sunrise.
- G-1.41.4 The Contractor shall also provide and maintain suitable detour signs so as to warn the public of work under way, and to guide them around the work in progress where it would be dangerous for them to proceed through the working area.
- G-1.41.5 If required by the Engineer/Project Manager, the Contractor shall also provide watchmen, or signalmen for protection and guidance of the public.



G-1.41.6 All barricades, lights, signage, flagging, and signalmen shall be established and operate in accordance with City requirements and North Carolina Department of Transportation.

G-1.42 DRAINAGE: The Contractor shall maintain an unobstructed flow of the natural and artificial drains at all times, and in the event it is necessary during the prosecution of work to obstruct the free flow of either, the Contractor shall provide for flow of water in such manner that no damage shall result, or a nuisance be created.

G-1.43 CLEANING UP: On the completion of any part of the work, the Contractor shall remove all surplus earth, materials of construction, debris, and refuse from the work as directed by the Engineer/Project Manager. On the final completion of the work, all debris over the entire contract, which is a result of work by the Contractor, shall be moved or destroyed as directed by the Engineer/Project Manager.

G-1.44 INCIDENTAL WORK: The duties of the Contractor have been set out in these specifications in a broad manner, with the intent of bringing to the attention of the Contractor his responsibilities under the contract, and any details of the work not specifically mentioned, but obviously necessary for carrying on, and the completion of the work shall be considered incidental thereto, and as being a part of, and included with the work for which prices have been named in the proposal, and the Contractor will not be entitled to any additional compensation therefor.

G-1.45 CONTRACTOR'S CLAIM FOR DAMAGES: In the event the Contractor is of the opinion that he should be compensated for damages sustained by reason of some act of the City, its agents or employees, the amount of such claims shall be itemized and a detailed report shall be furnished the Engineer/Project Manager by the Contractor within ten (10) days after the date it is claimed such damages were sustained. If the Contractor fails to file his claim in the manner and within the time named, but presents such claim at a later date when it would be impossible to make a thorough investigation, such claims will be forfeited and invalidated, and payment of the alleged damages will be disallowed.

G-1.46 EXTENSION OF TIME: No extension of time will be made the Contractor for completing the work on account of ordinary and usual delays, such as the condition of the weather, and lack of material, accidents, and the occurrence of such will not relieve the Contractor from the necessity of maintaining the rate of progress agreed upon. The City will have the right, upon the recommendation of the Engineer/Project Manager after investigation, to extend the time for completion when extraordinary delays or accidents of unusual nature are incurred over which the Contractor has no possible control; but such action on the part of the City shall not operate or be construed to waive any of the rights of the City under this Contract. In the event the Contractor fails to complete the work in the specified time named in the proposal, and is permitted to continue and complete the work as if such time had not lapsed, such permission shall not be deemed a waiver in any respect by the City of any liability for extra expense thereby incurred arising from the noncompletion of said work, within the specified time, but such liability shall remain in full force against the Contractor.

G-1.47 TIME FOR COMPLETION AND LIQUIDATED DAMAGES: It is hereby understood and mutually agreed, by and between the Contractor and the City, that the date of beginning and the time for completion as specified in the contract of work to be done hereunder are ESSENTIAL CONDITIONS of this contract.

The beginning date of the construction period shall be ten (10) days following the date on the NOTICE TO PROCEED letter duly mailed by the Purchasing Manager to the contractors address indicated in the bid documents.

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is

expressly understood and agreed, by and between the Contractor and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the City the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specification wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be to the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the City determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the City; Provided further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to any preference, priority or allocation order duly issued by the City.

G-1.48 DELETED

G-1.49 FINAL ESTIMATE: The Engineer/Project Manager shall certify to the City in writing when, in his opinion, the Contractor has performed all that is set out in the contract and the specifications relative to the construction, and the Engineer/Project Manager shall show in such certificate the amount of work done from actual measurement, and the value of such work under and according to the prices named in the proposal. The City, on acceptance of said certificate, shall pay unto the Contractor within thirty (30) days thereafter the amount remaining due, and that part of the estimate remaining unpaid and including all moneys retained in the monthly estimates and for other causes under the contract.

The acceptance by the Contractor of the final payment shall release the City of any and all claims, liabilities and obligations to the Contractor for any and all work done and materials furnished, or for any act of the City or its agents or employees affecting the same. Before final payment is made, the Contractor shall submit an affidavit to the Engineer/Project Manager, stating that he has fully paid all bills for equipment, materials, or labor used on this project.

G-1.50 INSPECTION AND TESTING MATERIALS: Whenever in these contract documents, inspection and testing of materials is called for, the selection of bureaus, laboratories and/or agencies for such inspection and testing is subject to the approval of the Engineer/Project Manager.

G-1.50.1 Documentary evidence satisfactory to the Engineer/Project Manager that the materials have passed the required inspection and testing must be furnished to the City by the Contractor prior to the incorporation of such materials in the work, when required by the Engineer/Project Manager, and rejected materials must be promptly removed from the premises.

G-1.50.2 Wherever an outside testing laboratory is employed for testing of materials to be incorporated in this contract, the City of Wilmington shall employ and pay said laboratory for services rendered.

G-1.51 CONTRACTOR'S USE OF PUBLIC WATER: The Contractor shall comply with all requirements of the Cape Fear Public Utility Authority for use of public water.

G-1.52 DELETED

G-1.53 RIGHTS-OF-WAY: The City shall furnish all needed rights-of-way for the project, but in the event that any certain rights-of-way and grounds necessary for the purpose of this Contract be not acquired by the City until after the beginning of the work, the Contractor shall so arrange the procedure of work as to allow time for the acquisition of such rights-of-way, and the City will not reimburse, or be liable to the Contractor for any losses resulting from, or incident to, such delay. As soon as the rights-of-way in question have been acquired, the Contractor shall at once proceed with the work thereon with such forces as will insure its prompt completion, but if there is such delay in procuring the right-of-way in question that there will not remain a reasonable length of time before the date set for the completion of this particular work, this fact shall operate so as to extend the time for completion of the particular work affected and to compensate for the actual time lost.

G-1.54 USE OF A PORTION OF THE WORK: Whenever, in the opinion of the Engineer/Project Manager, any portion of the work is completed, or is in an acceptable condition for use, it shall be used for the purpose intended. Such use shall not be held in any way as an acceptance of that portion of the work used, or as a waiver of any of the provisions of these specifications. Necessary repairs or renewals in any section of the work due to defective materials, defective workmanship, or natural causes, under the instructions of the Engineer/Project Manager shall be performed by the Contractor at no additional cost to the City.

G-1.55 EXCISE TAX ON MATERIALS OR FEDERAL TRANSPORTATION TAX, EXEMPTION THEREON: Wherever existing Federal Laws concerning Federal Excise Taxes and Federal Transportation Tax provide that the City of Wilmington is exempt from payment of such tax on items purchased by it, and these laws and regulations permit the extension of this exemption to the Contractors performing work for the City, the City will supply affidavits as to the existence and nature of the Contract, as requested by the Contractor for his use in filing with his vendors and transportation agencies to make his purchases for work under this Contract exempt from such taxes; providing (1) that the Contractor shall have filed an affidavit with the City that his bid on this contract does not include any costs of said taxes, and (2) that the materials for which he will request exemption from tax will be only those materials, which upon completion of the Contract will have actually been incorporated into the work under this Contract, and upon receipt of final payment by the Contractor will become the property of the City of Wilmington.

G-1.56 REQUIRED RECORDS ON SALES AND USE TAX: In order that the City may substantiate a refund claim for sales and use taxes, the Contractor shall furnish the City certified statements in triplicate, setting forth the cost of building materials, supplies and fixtures, and equipment which become a part of, or are annexed to any building or structure being erected, altered, or repaired under contract with the City and the amount of sales and/or use taxes paid thereon.

In the event the Contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock which is incorporated in the work, and the amount of sales and use tax paid thereon by the Contractor. The Contractor shall also obtain similar certified statements by his Sub-contractors and submit them to the City.

Bidders are reminded that an additional Two percent (2%) North Carolina Sales Tax is now collected on all sales made within certain counties. Purchases within these counties will require separate certified statements for this 2% tax. This statement shall give the vendors name, invoice number, total amount of invoice, date of invoice, the amount of the special 2% tax paid and the County in which the purchase was made. In the event that the Contractor wishes to file a combined certified statement showing the 4% tax and the 2% tax separately, this will be acceptable provided he gives the counties in which the 2% tax was paid.

This certified statement must be submitted to the City Engineer/Project Manager monthly, and all certified statements shall be submitted before final payment is made for work performed under this contract.

G-1.57 DELETED

G-1.58 DELETED

G-1.59 TEMPORARY SUSPENSION OF WORK: The Engineer/Project Manager shall have the authority to suspend the work, wholly or in part, for such period or periods as may be deemed necessary due to unsuitable weather, or other such conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given, or perform any or all provisions of the Contract. If it should be necessary to stop work for an indefinite period, the Contractor shall store all materials necessary in such a manner that they will not deteriorate or become damaged in any way, and he shall take every precaution necessary to prevent damage or deterioration of the work performed, provide suitable drainage by opening ditches, shoulder drains, etc., and erect structures where necessary. The Contractor shall not suspend the work without authority from the Engineer/Project Manager. Neither the failure of the Engineer/Project Manager to notify the Contractor to suspend the work on account of bad weather, nor permission from the Engineer/Project Manager to continue work during bad weather shall be cause for the acceptance of any work which does not comply in every respect with the Contract and Specifications.

G-1.60 EQUAL OPPORTUNITY REQUIREMENTS: The Contractor agrees that it will in carrying out the terms of this agreement, comply with the provisions of Executive Order 11246 entitled "Equal Employment Opportunity".

In complying with the provisions of Executive Order 11246, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) 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 or national origin.

(c) 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 worker 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.

(d) 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.

(e) 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 Department of Housing and Urban Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) 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 federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 or September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) 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.

(h) EXEMPTIONS TO EQUAL OPPORTUNITY CLAUSE: (1) Contracts and sub-contracts not exceeding \$10,000.00 (other than Government bills of lading) are exempt. The amount of the contract, rather than the amount of the Federal Financial Assistance shall govern in determining the applicability of this exemption. (2) Except in the case of sub-contractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in sub-contracts below the second tier. (3) Contracts and sub-contracts not exceeding \$100,000.00 for standard commercial supplies or raw materials are exempt.

G-1.61 SAFETY: The contractor and each of his subcontractors shall comply at all times with all regulations of the Occupational Safety and Health Administration and all labor laws and regulations of the State of North Carolina applicable to safety. Such standards include 29 CFR Part 1926 and applicable standards from 29 CFR Part 1910 of the Code of Federal Regulations.

The contractor and each of his subcontractors shall maintain adequate protection against damage to life and property during the work and shall provide and maintain all necessary protective devices until completion and acceptance of the work by the City.

In any emergency threatening life or property not considered by the contractor as coming under the provisions provided in this Section G-1.61 the contractor may act at his own discretion to prevent or alleviate the threatening situation without authorization by the City.

G-1.62 Contractor shall obtain building, electrical, mechanical and plumbing permits for all work under the Contract.

G-1.63 **GENERAL CONTRACTOR:** In the event the bid and subsequent contract require separate prime contractors for the various phases of the work, the Contractor receiving the **GENERAL CONSTRUCTION** contract shall act as the General Contractor for the project in regards to scheduling of the work and other duties generally carried out by the General Contractor.

G-1.64 **PLANS AND SPECIFICATIONS:** All firms receiving award on a section of the contract shall receive free of charge from the City of Wilmington two (2) complete sets of plans and specifications for the project. For Single prime contracts involving multiple subcontractors, the primary subcontractors (HCAC, Plumbing, and Electrical or specialty item specifically bid as a separate item) shall receive up to two (2) complete sets of plans and specifications. Any further sets required by the contractor shall be charged to the contractor at the cost of reproduction.

G-1.65 **DISPUTES:** Any disputes in excess of \$15,000 shall be processed in accordance with Section 13 of the contract.

Rev. 2/02

NEW HANOVER COUNTY

CONTRACT FOR CONSTRUCTION SERVICES

THIS CONTRACT, made this the \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the CITY OF WILMINGTON, NORTH CAROLINA, a Municipal Corporation located in New Hanover County (hereinafter called "CITY"); and 1. a corporation organized under the laws of the State of \_\_\_\_\_; 2. a non-profit corporation organized under the laws of the State of \_\_\_\_\_; 3. an unincorporated association having its principal place of business in \_\_\_\_\_; 4. a resident of \_\_\_\_\_; or 5. owner of a partnership organized under the laws of the State of \_\_\_\_\_, with its principal offices in \_\_\_\_\_ (hereinafter called "CONTRACTOR").

W I T N E S S E T H:

1. Purpose

The CITY hereby employs the CONTRACTOR to furnish all labor, materials and equipment to perform all work in manner and form as specified by the attached plans, specifications and documents consisting of, but not limited to: Advertisement, Instructions to Bidders, General Conditions, Technical Specifications, Proposal and Affidavit, and Contract, which are incorporated as if fully set out, for the following:

DREAMS CEILING REPAIRS as specified herein and on the plans, specifications, contract documents, drawings, addenda and change orders (if any).

2. Term of Contract/Liquidated Damages

The CONTRACTOR shall commence the work to be performed under this contract within ten (10) days of receipt of a written order from the Purchasing Manager, and shall complete all work hereunder within 80 calendar days of the date of beginning. The CONTRACTOR further agrees to pay, as liquidated damages, the sum of \$230.00 for each consecutive calendar day thereafter as hereinafter provided in Paragraph G-1.47 of the General Conditions.

3. Extra Work

In the event extra work is necessary, not set forth or contemplated in this contract, the CONTRACTOR agrees to faithfully perform all such work under a written change order from the CITY, setting forth and describing fully the work to be done. The CITY hereby agrees to pay to the CONTRACTOR, for any such extra work, upon presentation of properly prepared, itemized statements of cost computed as follows:

- (a) The CONTRACTOR shall be allowed to charge for labor used at the actual payroll charges during the time actually spent on extra work, (b) He shall be allowed to add on labor

charges the percentage shown in Paragraph 6 of the Proposal for Workmen's Compensation Insurance, Social Security and other payroll charges, (c) The rate for such equipment, this hourly rate to be for operating hours only, (d) The CONTRACTOR shall be allowed to charge for material purchased by him and used on extra work orders the amount charged to him by the vendor upon presentation of paid invoices, (e) The CONTRACTOR shall be allowed to add to the costs of said work arrived at enumerated above ten (10%) percent of materials, cost of equipment and actual payroll cost for overhead and profit.

4. Payment

4.1 The CITY agrees to pay to the CONTRACTOR for the faithful performance of this contract, subject to any additions or deductions as provided for in the Specifications or Proposal, and in accordance with the prices as set forth, subject to any additions which may be due under Paragraph 3 of this Agreement, Unit Prices and/or lump sum price, as set forth in the Proposal, the estimated total cost of \_\_\_\_\_  
(\$ \_\_\_\_\_)

4.2 Not later than 30 work days after receipt of a City approved invoice the City will make partial payment to the Contractor on the basis of a duly certified approved estimate by the City Engineer/Project Manager of the work performed during the preceding calendar month by the Contractor, and the value of the materials on the job, but not installed, less five (5%) percent of the amount of such estimate, which is to be retained by the CITY until all work has been performed strictly in accordance with this contract and until such work is accepted by the CITY.

4.3 Upon submission by the CONTRACTOR of evidence satisfactory to the CITY that all payrolls, materials, bills and any other liabilities or costs incurred by the CONTRACTOR in connection with the construction of this work has been paid in full, final payment on account of this contract shall be made within thirty (30) days after completion by the CONTRACTOR of all work covered by this agreement and the acceptance of such work by the CITY.

5. Performance Bond

DELETED

6. Insurance; Proof of Coverage

The CONTRACTOR shall take out and maintain, during the life of this contract, all insurance required under Paragraph G-1.06 of the General Provisions, and shall, at execution of this contract, attach to each of the counterparts thereof documentary proof of compliance in the form of a Certificate from his insurer, stating the amount, policy numbers, and kinds of insurance carried. This certificate shall also contain a statement by the insurer that he will notify the City of Wilmington by Registered Mail twenty (20) days prior to any cancellation or lapse of the insurance shown on this certificate. It is further agreed that the CONTRACTOR shall furnish the CITY with one memorandum copy of the policy, or policies, shown on this certificate at the time of the signing of this contract.

7. Guarantee

The CONTRACTOR hereby agrees to guarantee, for a period of one year after date of final payment, the work accomplished under this Contract. The CONTRACTOR agrees to repair at no cost to the CITY any defects due to faulty workmanship or materials which may appear in his work during this period.



8. Release and Indemnity

To the fullest extent permitted by law, the CONTRACTOR shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for the CONTRACTOR or for whom the CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of the CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this agreement, or otherwise provided by the CONTRACTOR, shall in no way limit the CONTRACTOR'S responsibility to release, indemnify, keep and save harmless and defend the CITY as herein provided. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Personnel

It is mutually agreed that CONTRACTOR is an independent contractor and not an agent of the CITY, and as such the CONTRACTOR shall not be entitled to any CITY employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

10. Conflict of Interest

No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

11. Non-Waiver of Rights

It is agreed that the CITY'S failure to insist upon the strict performance of any provision of this agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this agreement.

12. Suspension or Termination of Agreement

12.1 In the event that review of Contractor's performance shows non-conformance to the attached scope of service or other terms or conditions contained herein as a result of the Contractor's errors, omissions or negligent acts, the contractor shall be in breach of this Agreement and the City may take corrective action as it deems necessary including, but not limited to, withholding or reduction of payment.

12.2 The City shall also have the right to suspend this Agreement upon written notice to the Contractor. Such suspension may be made for any of the following reasons: (a) violations or non-compliance with the contract terms, (b) violations of OSHA laws or regulations, (c)

violations of Federal or State environmental and health laws or regulations, (d) operating City valves without permission, (e) moving City supplied water meters without permission, (f) failure to adequately plan for the protection of underground utilities during construction, (g) violation of any City ordinances or regulations or (h) verbal abuse of any City employees or others. In addition, any such violations may result in the Contractor being disqualified from bidding on future City projects. The written notice of suspension shall state the reasons for suspension and allow for a review period of ten (10) days during which the Contractor shall be provided with an opportunity to respond with an explanation or a justification, and/or shall undertake any reasonable remedial action required by the City. If, in the opinion of the City, the Contractor has not addressed the reasons for suspension at the completion of the ten (10) day suspension period, the City shall have a right to terminate this Agreement whereupon all obligations of the City to the Contractor shall cease.

12.3 The City may, at any time, terminate this contract for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall (a) cease operations as directed by the City in the notice; (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing sub- contracts and purchase orders and enter into no further sub-contracts and purchase orders. In the event that this project is terminated for the convenience of the City, the Contractor shall be paid for services performed to the date of termination and costs incurred by reason of such termination, but such costs shall not include anticipated profit on unperformed work. (In no event will the amount due contractor in the event of termination for convenience exceed that amount set forth in Paragraph 4.1 of this Agreement. Contractor shall be paid for all reimbursables, as defined herein, which are due him.)

12.4 If after notice of termination of this contract under the provisions of Paragraph 12.2, it is determined for any reason that the Contractor was not in default under the provisions of such paragraph, or that the default was excusable under the provisions of this contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued by the City for convenience as set forth in Paragraph 12.3.

12.5 Nothing contained herein shall prevent the City from pursuing any other remedy which it may have against the Contractor including claims for damages.

### 13. Contract Disputes

In accordance with G.S. 143-128.1(8) the parties agree to mediate contract disputes in excess of \$15,000.00. Within ten (10) days of such contract disputes, the parties shall select a mediator that is certified pursuant to all of the parties involved in the dispute. If the parties cannot agree on a mediator or do not timely select a mediator, the City shall select the mediator. The parties and the mediator shall agree upon the mediator's rate of compensation. The parties to the dispute shall share in the payment of the mediator's compensation with the City paying a minimum of one-third of the compensation if the City is a party to the dispute.

### 14. Assignment of Agreement

It is mutually agreed by the parties hereto that this agreement is not transferable by either party to this agreement without the consent of the other party to this agreement.

### 15. Subcontracts

The CONTRACTOR shall utilize no subcontracts for carrying out the services to be performed under this agreement without the written approval of the CITY.

16. Entire Agreement

The agreement constitutes the entire understanding of the parties.

17. Binding Effect

The agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties.

18. Continuing Obligation

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

19. Reference

Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of the agreement.

20. Interpretation

All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

21. Saving Clause

If any section, subsection, paragraph, sentence, clause, phrase or portion of this contract is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

22. Other Laws and Regulations

CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

23. Amendments

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

24. Non-Discrimination

CONTRACTOR will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONTRACTOR will comply with all provisions of Executive Order No. 11246, the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY'S option, in a termination or suspension of this agreement in whole or in part.

25. Authority to Act / IDA Certification

Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant and represent that the CONTRACTOR is a duly organized and validly existing legal entity authorized to transact business within the State of North Carolina, that the CONTRACTOR has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so. The undersigned certifies that CONTRACTOR is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147, CONTRACTOR shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

26. Counterparts.

This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

27. No Publicity.

No advertising, sales promotion or other materials of the CONTRACTOR or its agents or representations may identify or reference this Contract or the CITY in any manner absent the written consent of the CITY. Notwithstanding the forgoing, the parties agree that the CONTRACTOR may list the CITY as a reference in responses to requests for proposals, and may identify the CITY as a customer in presentations to potential customers.

28. Immunity Not Waived

This Agreement is governmental in nature, for the benefit of the public. CONTRACTOR acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.

29. CITY Not Liable For Special or Consequential Damages.

The CITY shall not be liable to the CONTRACTOR, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the CITY, or any other consequential, indirect or special damages or lost profits related to this Contract.

30. Public Records.

CONTRACTOR acknowledges that the CITY is a public entity, subject to North Carolina's public records laws (N.C.G.S. § 132) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

If CONTRACTOR believes documents related to the Agreement contain trade secrets or other proprietary data, CONTRACTOR must notify the CITY and include with the notification a statement that explains and supports CONTRACTOR'S claim. CONTRACTOR also must specifically identify the trade secrets or other proprietary data that CONTRACTOR believes should remain confidential.

In the event the CITY determines it is legally required to disclose pursuant to law any documents or information CONTRACTOR deems confidential trade secrets or proprietary data, the CITY, to the extent possible, will provide CONTRACTOR with prompt written notice by certified mail, fax, email, or other method that tracks delivery status of the requirement to disclose the information so CONTRACTOR may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for CONTRACTOR to seek court ordered protection or other legal remedies as deemed appropriate by CONTRACTOR. If CONTRACTOR does not obtain such court ordered protection by the expiration of said time period, the CITY may release the information without further notice to CONTRACTOR.

31. Minority Business Enterprise (MBE)

The CITY desires that minority business enterprises have the maximum opportunity to participate in the performance of this contract and will:

31.1 Promote affirmatively (where feasible) in accordance with North Carolina General Statute 143-129, together with all other applicable laws, statutes and constitutional provisions, the procurement of goods, services in connection with construction projects for minority owned business enterprises.

31.2 Insure that competitive and equitable bidding opportunities are followed to afford minority business enterprises participation. Strive to obtain contract and subcontract awards to minority business enterprises.

31.3 Identify and communicate to the minority business enterprises community procedures and contract requirements necessary for procurement of goods and services for construction projects and subcontracts.

31.4 Provide technical assistance as needed.

31.5 Promulgate and enforce contractual requirements that the general CONTRACTOR or all construction projects shall exercise all necessary and reasonable steps to insure that minority business enterprises participate in the work required in such construction contracts.

The CONTRACTOR shall insure that minority business enterprises have the maximum opportunity to compete for and perform portions of the work included in this contract and shall not discriminate on the basis of race, color, national origin or sex. The CONTRACTOR shall include this special provision, Minority Business Enterprise (MBE), in all subcontracts for this contract. Failure on the part of the CONTRACTOR to carry out the requirements set forth in this special provision may constitute a breach

of contract and after proper notification may result in termination of the contract or other appropriate remedy.

A minority business enterprise is defined as a business, with at least fifty-one (51%) percent owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management. Minority group members may consist of Black Americans (an individual of the Black race of African origin), Hispanic Americans (an individual of a Spanish speaking culture and origin at parentage), Asian Americans (an individual of a culture, origin or parentage traceable to the areas of the Far East, Southeast Asia, the Indian subcontinent and the Pacific Islands), Indian Americans (an individual who is an enrolled member of a Federally recognized Indian tribe, or recognized by the tribe as being an Indian, as evidenced by a certification of a tribal leader), American Aleuts or any recognized minority group approved by the CITY.

A Woman Business Enterprise is a business with at least fifty-one (51%) percent owned and controlled by women who exercise actual day-to-day management.

The CONTRACTOR shall exercise all necessary and reasonable steps to insure that Minority Business Enterprises and Woman Business Enterprises participate in the work required in this contract. The CONTRACTOR agrees by executing this contract that he will exercise all necessary and reasonable steps to insure that this special provision contained herein on Minority Business Enterprise is complied with.

## 32. Federal Contract Provisions

### A. Federal Applicability

The Work to be performed under this Contract will be financed in whole or in part with Federal funding. As such, Federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal Government determines otherwise. This Section identifies the Federal requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the Federal awarding agency's terms and conditions.

### B. Civil Rights Requirements

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. 5323(h)(3) by not using any Federal assistance to support procurements using exclusionary or discriminatory specifications.

**Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.**

1. Nondiscrimination

In accordance with 41 C.F.R. 60-1.4, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements the Federal awarding agency may issue.

2. Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, and 42 U.S.C. §2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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.

3. Age

In accordance with §4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 U.S.C. §623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

4. Disabilities

In accordance with §102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

5. Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Article in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

C. Davis-Bacon & Copeland Anti-Kickbacks Acts. DELETED

D. Contract Work Hours & Safety Standards Act. DELETED

E. Right to Inventions Made Under a Contract or Agreement. DELETED

F. Clean Air. DELETED

G. Clean Water. DELETED

H. Energy Conservation

The Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.*

***This requirement extends to all third party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.***

I. Government-Wide Debarment & Suspension

This Contract is a covered transaction for purposes of 2 CFR Part 1200.220, and 2 CFR Part 180.200, which replaces the requirements and guidelines of the previously controlling 49 CFR Part 29. As such, the Contractor is required to verify that neither it, nor its principals (as defined at 2 CFR 180.995) or affiliates (as defined at 2 CFR 180.905) is excluded (as defined at 2 CFR 180.940) or disqualified (as defined at 2 CFR 180.935). The Contractor, pursuant to 2 CFR 180.330(a) – (b), must also include a term or condition in lower-tier transactions requiring lower-tier participants to comply with requirement in subpart C in 2 CFR 180, and require lower-tier participants to pass the requirement to comply with 2 CFR subpart C to each person with whom the lower-tier participant enters into a covered transaction at the next lower tier. Subpart C of 2 CFR 180 requirements (Contractor and lower-tier participants must comply):

1. Verification

The Contractor and all lower-tier participants must verify that the person with whom the Contractor or lower-tier participant intends to do business with is not excluded, pursuant to the definition set out in 2 CFR 180.940, or disqualified, pursuant to the definition in 2 CFR 180.935. The Contractor and all lower-tier participants may do this by either: (a) checking the Excluded Parties List System (EPLS), found at <http://epls.arnet.gov> or <http://www.epls.gov>, (b) collecting the certification form from the lower-tier participant, or (c) adding a clause or condition to the covered transaction with that lower-tier participant.

2. Disclosing Information

The Contractor and all lower-tier participants, before entering into a covered transaction, must notify the higher-tiered participant if they are presently excluded or disqualified, or any of their principals are excluded or disqualified, pursuant to 2 CFR 180.355.

***This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

***The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.***

J. Lobbying

The Contractor agrees to comply with the provisions of Title 31, U.S.C. 1352, The Byrd Anti-Lobbying Amendment, as in force or as it may hereafter be amended. The Contractor and all subcontractor tiers shall file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City.



***The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.***

K. Recovered Materials

The Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962, including but not limited to the regulatory provisions of 40 CFR Part 247 and Executive Order 12873, as they apply to the procurement of the items designated in Part B of 40 CFR Part 247.

***This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

L. Conflict of Interest

No employee, officer, board member, or agent of the City or the Contractor shall participate in the selection, award, or administration of a contract supported by FEMA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employees or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

M. Disadvantaged Business Enterprises (DBE)

The City promotes policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Contractor agrees to solicit small and minority business and women's business enterprises whenever they are potential sources. When economically feasible, the Contractor agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Contractor agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Contractor agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

***This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

N. Access to Records and Reports and Record Retention

The record keeping and access requirements extend to all third party contractors and their contracts at every tier. Under 49 U.S.C. § 5325(g) and 2 C.F.R. § 200.336, FEMA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FEMA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than five (5) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records

shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

a. The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for a period of five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FEMA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

3. Access to Records.

a. The Contractor agrees to provide sufficient access to FEMA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g) and 2 C.F.R. § 200.336.

c. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FEMA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.

d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. Access to the Sites of Performance. The Contractor agrees to permit FEMA and its contractors access to the sites of performance under this contract as reasonably may be required.

O. Termination or Cancellation of Contract

1. Termination Without Cause: CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party. Upon receipt of Notice of Termination, the CONTRACTOR shall immediately discontinue all services directed (unless the Notice directs a date specific for services to terminate). As soon as practicable after receipt of a written Notice of Termination without cause, the CONTRACTOR shall submit a statement to the CITY showing in detail the Work performed under this Contract through the date of termination. The CITY shall pay the CONTRACTOR for Work rendered through the date of termination

2. Termination for Cause: CITY shall have the right to terminate this Agreement because of the failure of the CONTRACTOR to fulfill its obligations under the Contract by giving 30 days' written notice to CONTRACTOR. The Notice of Termination shall specify the nature, extent, and effective date of the termination.

For all contracts in excess of \$10,000, this clause extends to all third party contractors, and their contracts at every tier, and subrecipients and their subcontracts at every tier, as referenced in 2 C.F.R. 200.339 and 2 C.F.R. Part 200, Appendix II (B).

P. Breach of Contract Rights and Remedies

All contracts in excess of \$150,000 shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate as provided in 2 C.F.R. § 200.326 and 2 C.F.R. part 200, Appendix II (A). The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier. For purposes of this Contract, breach shall include the Contractor and any subsequent named subcontractor.

1. Rights and Remedies of the Owner - The Owner shall have the following rights in the event that the Owner deems the Contractor guilty of a breach of any term under the Contract.
  - a. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
  - b. The right to cancel this Contract as to any or all of the work yet to be performed;
  - c. The right to specific performance, an injunction or any other appropriate equitable remedy; and
  - d. The right to money damages.
2. Rights and Remedies of the Contractor - Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Owner, the Contractor expressly agrees that no default, act or omission of the Owner shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Owner directs Contractor to do so) or to suspend or abandon performance.
3. Remedies - Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Owner will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Owner takes action contemplated herein, the Owner will provide the Contractor with sixty (60) days written notice that the Owner considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.
4. If there is credible evidence that a Third Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of the Federal awarding agency is required.

Q. Copyrights and Rights in Data. DELETED

- R. Cost Principles. Any adjustment to the Contractor's compensation, including requested reimbursable expenses, shall include only costs and other compensation that are allowable, allocable, and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable, and reasonable under 2 CFR 200 Subpart E—Cost Principles and any implementing guidelines or regulations issued by the Office of Management and Budget (OMB). Contractor further agrees to provide adequate documentation to support costs (direct and indirect) charged to the Federal award.

***This requirement extends to all third party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.***

- S. DHS Seal, Logo, 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 preapproval.
- T. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract
- U. F.A.R. Compliance. Any adjustment to the Contractor's compensation under the Contract shall include only costs and other compensation that are allowable, allocable and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 C.F.R., Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.
- V. No Federal Government Obligations to Third Parties  
The No Obligation clause extends to all third party contractors and their contracts at every tier.

The Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

**The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.**

**ATTACHMENT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION**

*(To be submitted with all bids exceeding \$25,000.)*

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

COMPANY \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

State of \_\_\_\_\_

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

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

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

My Appointment Expires \_\_\_\_\_

[SEAL]

IN WITNESS WHEREOF, the CITY has caused this agreement to be duly executed in its name and behalf and the CONTRACTOR has caused this agreement to be duly executed in its name and behalf and its corporate seal to be hereunto affixed, and attested to.

CITY OF WILMINGTON, NORTH CAROLINA

BY: \_\_\_\_\_  
Sterling B. Cheatham, City Manager

WITNESS:

\_\_\_\_\_  
Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Melissa I. Huffman, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Jennifer R. Maready, Director of Finance

Project String: \_\_\_\_\_

Org./Obj.: \_\_\_\_\_

Amount of Contract \$\_\_\_\_\_

PO# \_\_\_\_\_

Federal ID Number: 56-6000239

\_\_\_\_\_  
BY: \_\_\_\_\_  
President, Vice President,  
Assistant Vice President

ATTEST:

\_\_\_\_\_  
Secretary, Assistant Secretary,  
Trust Officer

(CORPORATE SEAL)

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

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

I, \_\_\_\_\_, a Notary Public, certify that  
(Name)

\_\_\_\_\_ personally came before me this day and  
(Name of Sec., Assist. Sec., Cashier, Assist. Cashier)

acknowledged that he (she) is \_\_\_\_\_ of  
(Secretary, Assist. Sec., Cashier, Assist. Cashier)

\_\_\_\_\_, a corporation, and that by authority duly given and

as the act of the corporation, he (she) executed the foregoing instrument on behalf of the corporation sign  
in its name by its \_\_\_\_\_ sealed with its  
(President or Vice President:

its corporate seal, and attested by himself (or herself) as its \_\_\_\_\_.  
(Sec., Assist. Sec., Cashier, Assist. Cashier)

WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020

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

My Commission expires: \_\_\_\_\_

(NOTARY SEAL)

INSURANCE CERTIFICATES

(Staple Insurance Certificates as required  
under Paragraph G-1.06 to this sheet)



**CITY OF WILMINGTON**

**NORTH CAROLINA**

**PROPOSAL  
FOR  
DREAMS CEILING REPAIRS**

**CONTRACT NO. PB-IH-0120.1**

1. The undersigned, having carefully examined the site of the proposed work, the entire Bidding Document, including but not limited to the Advertisement, Special Notice, General Provisions, Technical Specifications, Federal Requirements (if any), Contract and Plans and/or Standard Details attached hereto, all of which are fully understood and hereby agreed to, proposes to furnish all materials, labor, equipment and plant necessary to complete in-place the specified improvements, in strict accordance with the above mentioned bidding documents.
2. Where an interpretation as to specifications is necessary, or as to the character of the work performed, or as to further instructions relating to the work, before or during construction, the undersigned bidder hereby agrees that (hereinafter called "ENGINEER/PROJECT MANAGER") shall be the authority and his word shall be final.
3. The prices, as stated, are for the work completed and also to include all charges and expenses for furnishing all labor, materials, equipment and plant for completing the specified work in the manner specified in the specifications, and according to the instructions of the ENGINEER/PROJECT MANAGER, unless otherwise shown in the Proposal.
4. If awarded this contract, the undersigned agrees to begin construction on the date to be specified in the written order by the Purchasing Manager, and to complete all work within 80 calendar days of the date of beginning. The CONTRACTOR further agrees to pay, as liquidated damages, the sum of \$230.00 for each consecutive calendar day thereafter as hereinafter provided in paragraph G-1.47 of the General Conditions.
5. The undersigned hereby certifies that this Proposal is made without connection with any person or persons making bids or proposals for the above work, and that the bid is in all respects fair and without collusion or fraud.
6. The undersigned understands and agrees that all extra work shall be done and paid for as provided under the applicable sections of the specifications. In the event that extra work is necessary, the percentage to be added to the actual payroll cost to cover Social Security, small hand tools, office overhead on labor management only, Workmen's Compensation Insurance and other insurance for labor costs shall be 5% percent.

All extra work shall be done using actual payroll and material costs, and a profit of ten percent (10%) of the total cost shall be added thereto. All items of materials shall be billed to the CITY on the extra work invoice, and a delivery slip from the vendor shall be submitted therewith to verify actual cost. No additional profit will be allowed on materials other than the normal overall ten percent (10%) above stated. Items not provided for above shall be agreed upon between the CONTRACTOR and the ENGINEER/PROJECT MANAGER prior to invoicing.

7. The undersigned understands that, if awarded this contract, he must guarantee, for a period of one year after date of final payment, all work accomplished under this contract to the extent that he will repair any defects due to faulty workmanship, or materials which may appear in his work during this period.

8. The undersigned supplies the information recorded below for use in the preparation of the contract documents, in event of contract award:

8.1 Please indicate type of business organization:

- (a) Proprietorship \_\_\_\_\_
- (b) Partnership \_\_\_\_\_
- (c) Corporation \_\_\_\_\_
- (d) Limited Liability Co. \_\_\_\_\_

8.2 If business is a Corporation, please answer the following questions:

Name and title of officers, authorized by Corporate Resolution, who will execute the contract on behalf of corporation (generally President and Secretary).

\_\_\_\_\_

Firm is incorporated in what state? \_\_\_\_\_

If firm is a foreign corporation, does firm have a certificate of authority from the North Carolina Secretary of State? \_\_\_\_\_

8.3 If business is a Partnership, please answer the following:

Name in full or all general partners and addresses:

\_\_\_\_\_ Is this a limited or general partnership? \_\_\_\_\_

If a limited partnership, what is state of registration? \_\_\_\_\_

If business is a foreign limited partnership, does business have a certificate of authority from the North Carolina Secretary of State? \_\_\_\_\_

8.4 If business is a Proprietorship, please answer the following:

Name of owner: \_\_\_\_\_

8.5 If business is a limited liability company, please answer the following:

List the names and title of managers or member-managers who will execute the contract on behalf of the company? \_\_\_\_\_

What is state of organization? \_\_\_\_\_

If business is a foreign limited liability company, does business have a certificate of authority from the North Carolina Secretary of State? \_\_\_\_\_

8.6 For all bidders:

If the business operates under an assumed name, what is the assumed name?

\_\_\_\_\_

Has a certificate of assumed name been filed in the New Hanover County Registry?

\_\_\_\_\_

If so, please provide the recording information. Deed Book \_\_\_\_\_ at Page \_\_\_\_\_.

9. Additional Information - Please respond to each:

9.1 North Carolina Tax Payer Identification Number: \_\_\_\_\_

9.2 Does your company have an Affirmative Action Plan?  
Yes \_\_\_\_\_ No \_\_\_\_\_

10. The undersigned proposes to accomplish the work as described in the following at the unit prices and/or lump sum price shown. In the event of a discrepancy in the unit prices and the extended prices, the unit prices shall prevail.

**SCOPE OF WORK**

The work consists of resin-isocyanate (polyurethane) sprayed in-place closed cell foam insulation system insulation where shown on the Drawings, as specified herein, and as required for a complete and proper installation. Work includes but is not limited to the following scope.

**Garage Playhouse (estimated square footage)**

Furnish and install the following:

- A. 2,314 square feet of foamed-in-place insulation in garage ceiling indicated area – Spray Polyurethane Foam (SPF)
- B. 2,314 square feet of 5/8” painted gypsum ceiling

**1.0 Details**

- 1.1 Set up work area to protect building and equipment from SPF overspray
- 1.2 Prepare surface by brushing, scrubbing, scraping, or grinding to remove loose fiberglass, dust, oil, grease, oxidation, mill scale and other contaminants which will affect adhesion and integrity of the foam insulation system, and prep surface for SPF installation.
- 1.2 Provide and install closed cell sprayed foam insulation to create an R value of 38 - defined as, plastic resin and catalyst, cold setting, low-density, closed cell foam, two component system, to an airtight condition
- 1.3 Provide and install 5/8-inch gypsum fire-rated Type X to the ceiling. 2,314 sf
- 1.4 Tape and sand to Level 4 finish (smooth) 2,314 sf
- 1.5 Prime gypsum wallboard, 1 coat
- 1.6 Paint full ceiling (approx. 3,292 square feet) with 2 coats Sherwin Williams Waterborne Acrylic Dryfall paint tinted to match existing ceiling or approved alternate

**2.0 References**

2.1 Referenced Standards: Comply with applicable requirements of the following standards and those others referenced in this Section. The standards referenced herein are included to establish recognized minimum quality only. Where these standards conflict with other specified requirements, the most restrictive requirements shall govern. Equivalent quality and testing standards will be acceptable, subject to their timely submission, review and acceptance by the Project Manager.

1. ASTM C 1029 - Spray Applied Rigid Cellular Polyurethane Thermal Insulation.
2. ASTM D 1621 – Test Method for Compressive Properties of Rigid Cellular Plastics.
3. ASTM D 1622 – Test Method for Apparent Density of Rigid Cellular Plastics.
4. ASTM D 1623 – Test Method for Tensile and Tensile Adhesion Properties of Rigid Cellular Plastics.
5. ASTM D 2126 – Test Method for Response of Rigid Cellular Plastics to Thermal and Humid Aging.
6. ASTM D 2842 – Test Method for Water Absorption of Rigid Cellular Plastics.
7. ASTM E 84 - Surface Burning Characteristics of Building Materials.
8. ASTM E 96 - Water Vapor Transmission of Materials.
9. ASTM E 2176 – Air Barrier Materials.
10. All applicable federal, state and municipal codes, laws and regulations for thermal insulation and vapor barriers.

2.2. **Definitions:** The "R-Value" referred to herein refers to the thermal resistance of the insulation alone and does not allow consideration of air spaces or other factors.

### 3.0 Quality Assurance

3.1 General: Notify the Project Manager where conflicts apply between referenced standards and existing materials, and existing methods of construction.

3.2 Sole Source: Obtain products required for the Work of this Section from a single manufacturer, or from manufacturers recommended by the prime manufacturer of sprayed foam insulation.

3.3 **Qualifications: Installer/Applicator: Minimum of 3 years documented experience demonstrating previously successful work of the type specified herein, and a licensed applicator by product manufacturer. a. Provide proof of manufacturer's certification. THESE ITEMS MUST BE SUBMITTED WITH THE BID DOCUMENT. FAILURE TO SUBMIT THESE DOCUMENTS WITH BID MAY BE CAUSE FOR REJECTION OF THE BID.**

3.4 Certifications: Fire Hazard Classification: Maximum flame spread/smoke developed rating of 25/450, tested to ASTM E84.

### 4.0 General Information

4.1 Contractor is responsible for scaffolding, lifts and all other equipment and materials necessary to complete the job.

4.2 Work MUST be scheduled and completed between February 10 – May 1, 2020.

4.3 A storage container is permitted to be located on-site during the project but it, and its contents, are the sole responsibility of the contractor and the City and tenant are held harmless for the container and contents.

**BASE BID: \$** \_\_\_\_\_

**In Words:**

(\$ \_\_\_\_\_)

11. The undersigned understands that the award under this Proposal will be made to the lowest responsible bidder as described in Section G-1.02 of the General Provisions, on the proposal page or in Section 15 Special Conditions.

12. The undersigned acknowledges receipt of any issued Addendums to this Project by recording the Addendum number and date acknowledged below:

Addendum #1: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum #2: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum #3: \_\_\_\_\_ Dated: \_\_\_\_\_

If awarded the work, I/we agree to begin work as soon as given the notice to proceed and complete the work ready for occupancy within the time limits specified.

This Proposal is submitted by:

\_\_\_\_\_  
Company Name

Signed by: \_\_\_\_\_  
Authorized Person's Signature

\_\_\_\_\_  
Type or Print Name of Person Signing Above

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

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

\_\_\_\_\_ Zip \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

North Carolina Contractor's License Number: \_\_\_\_\_

Rev.