

-- STATE OF NORTH CAROLINA--
DEPARTMENT OF TRANSPORTATION
RALEIGH, N.C.

MASTER AGREEMENT



**PROGRESSIVE
DESIGN-BUILD PROJECT**

US 19W South

December 4, 2025



DATE of SELECTION:	January 27, 2025
CONTRACT ID:	C205150
WBS ELEMENT NO.:	Each Early Work Package and Construction Contract to have separate wbs 18313.1100998.3.X and DF18313.1100998.3.X
COUNTIES:	Yancey
ROUTE NO.	US 19W, SR1411, SR1425
MILES:	Approximately 9 Miles
LOCATION:	US19W West of Burnsville, NC
TYPE OF WORK:	Progressive Design-Build as specified herein

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SECTION 1 - AGREEMENT AND GENERAL RECITALS

1.1 Master Agreement

This Master Agreement, made and entered into this _____, by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION hereinafter referred to as the “NCDOT” or “Department” and Branch Civil, Inc, hereinafter referred to as the “Design-Build Team” or “Progressive Design-Build Team”, whose primary offices are located at 3635 Peters Creek Road, Roanoke, Virginia, 24019 for the project known as US 19W South (“Project”).

1.2 Recitals

WITNESSETH:

WHEREAS, the Department is authorized by North Carolina Session Law 2024 Session Laws {House Bill 198} Section 2.(a) through 2.(e) and General Statute §136-28.11 to enter into an Agreement for performance of Progressive Design-Build services through which the Design-Build Team will collaborate with the Department to provide input on the design and provide advice, including constructability review, scheduling, pricing, and phasing, to assist in designing a more efficient and well-designed project, and

WHEREAS, the Design-Build Team has exhibited evidence of experience, ability, competence, and reputation to perform such professional services and has been pre-qualified by the Department; and the Department has submitted a pre-award report to the Joint Legislative Transportation Oversight Committee on the nature and scope of the project and the reasons using the Progressive Design-Build process will best serve the public interest, and

WHEREAS, the Design-Build Team has been selected pursuant to state guidelines and regulations to provide these Progressive Design-Build services to the Department as a result of the advertisement for such services initiated on December 18, 2024, and

WHEREAS, this Master Agreement governs pre-construction services and construction services through amendments hereto for various phases of the Work at such time that the scope and cost for those preconstruction and/or construction services are agreed upon by the Design-Build Team and the Department, and

WHEREAS, if the Department and the Design-Build Team are able to agree on a price for a given scope of work for design and/or construction, the Design-Build Team will execute an amendment to this Master Agreement and append this Master Agreement with said amendment.

NOW THEREFORE, the Department and the Design-Build Team, for consideration hereinafter stipulated, mutually agree to the terms of this Master Agreement as contained herein and as amended.

1.3 Execution of Master Agreement, Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification

The Design-Build Team's attention is directed to the various sheets in Section 16 of this Master Agreement which are to be signed by the Design-Build Team. The duly authorized representative of the Design-Build Team shall sign the applicable signature sheet depending on the nature of the contracting entity.

The Design-Build Team shall certify to the best of their knowledge all subcontractors, material suppliers and vendors utilized herein current status concerning suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency, in accordance with the "Debarment Certification" located behind the *Execution of Bid Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification* signature sheets in this RFP. Execution of the signature sheets in conjunction with any applicable statements concerning exceptions, when such statements have been made on the "Debarment Certification", constitutes the Design-Build Team's certification of "status" under penalty of perjury under the laws of the United States.

SECTION 2 – GENERAL

2.1 Definitions

Contract Documents: The assemblage of all contractual documents that include this Master Agreement, Preconstruction Agreement(s), Early Work Packages, Construction Contract, Supplemental Agreements, and all documents referenced therein, including, but not limited to, all addenda, Special Provisions, and NCDOT Standard Specifications and Drawings.

Construction Agreed Price: The negotiated, agreed upon price for the scope contained with a Preconstruction Agreement, Early Work Package, or Construction Contract, as applicable. This price will typically be lump sum and will include all costs, including but not limited to, construction, labor, materials, overhead, and construction management.

Construction Contract: The Contract Document that will govern the remaining construction and design services required of the Design-Build Team to complete the Project not otherwise included in previously executed Preconstruction Agreements or Early Work Packages. This contract could initially include a Guaranteed Maximum Price and could then be amended to include a Construction Agreed Price at the appropriate level of design. Supplement agreements to the Construction Contract will be typically for additional scope of services, conversion from a Guaranteed Maximum Price to a Construction Agreed Price or as in accordance with the Standard Specifications. The Construction Contract is considered a supplemental agreement to this Master Agreement and is a part of the Contract Documents.

Early Work Package: The Contract Document that will govern the construction and design, as applicable, to complete a specified portion of the construction work. Early Work Packages may be generated to initialize construction activities while final design is prepared or for preparation for construction items or materials with long lead times. Amendments to an Early Work Package may be made for additional scope of services or as in accordance with the Standard Specifications. An Early Work Package is considered a supplemental agreement to this Master Agreement and is a part of the Contract Documents.

Fixed Markup: A percentage used in the calculation of the Construction Agreed Price or Guaranteed Maximum Price in the project cost estimates, Preconstruction Agreement, Early Work Packages, Construction Contract, and supplemental agreements. The definition of the Fixed Markup takes on the meaning as described in Section 5.6.3 of this Master Agreement.

Guaranteed Maximum Price: The Guaranteed Maximum Price (GMP) committed to by the Design-Build Team for any outstanding preconstruction services and construction of the project covered by the Construction Contract. The GMP may be used in projects where numerous pricing steps are warranted or for a large Early Work Package. The primary intent of the GMP is to ensure that the project can be delivered within budget while work continues to a point where a Construction Agreed Price can be achieved. If a GMP is

employed, the applicable Contract Document will reflect the cost sharing provisions, incentives, risks, and contingencies that inform the GMP. In lieu of a GMP, the Department may require periodic Rough Order of Magnitude (ROM) estimates.

Independent Cost Estimator: A firm retained by the Department to assist in affirming various pricing by the Design-Build Team including but not limited to a Guaranteed Maximum Price or the Construction Agreed Price. The Independent Cost Estimator is typically procured through a professional services agreement and may include the development of pre-award or post-construction reporting.

Open Book Basis: The method by which the Department and the Independent Cost Estimator can validate and reconcile the Design-Build Team's pricing. The method allows for the Department to review all underlying assumptions, information, documents, and data associated with the issue in question, including assumptions as to costs of the work, delay costs, changes in cost, equipment rates (including rental rates), labor rates and benefits, quotes, estimates, proposals, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, insurance rates, insurance proceeds, credits and refunds, letter of credit fees, overhead, profit, and other items reasonably required by the Department to satisfy itself as to the reasonableness and accuracy of any pricing.

Preconstruction Agreement: The Contract Document between the Department and the Design-Build Team that includes the performance and costs related to a portion of, or all of the project design, preconstruction project management, and potentially certain other preconstruction coordination activities such as surveying or utility coordination. The initial Preconstruction Agreement may be a standalone contract but Preconstruction Agreements executed after this Master Agreement is executed, if any, will be considered a supplemental agreement to this Master Agreement and is a part of the Contract Documents.

Risk Register: A document maintained by the Design-Build Team but developed collaboratively with the Department that identifies various risks, probabilities, impacts, and mitigation strategies, which could result in contract provisions that best assign that risk to the appropriate party. The production and maintenance of the Risk Register is a requirement of this Master Agreement, but the Risk Register itself is not considered a Contract Document.

Total Project Construction Agreed Price: The summation of all Construction Agreed Prices of all Preconstruction Agreements, Early Work Packages, the Construction Contract, and amendments thereto.

Throughout this Master Agreement, all Contract Documents and manuals, documents and standards referred to in the Contract Documents, the terms NCDOT, Department, Engineer and State are synonymous.

2.2 Effective Date

The effective date of this Master Agreement is the date of execution by the Department.

Each Preconstruction Agreement, or amendment thereto, will have its own effective date, which shall be the date of execution of that Contract Document by the Department.

Each Construction Contract or Early Work Package, or amendment thereto will have its own effective date, which shall be the date of execution of that Contract Document by the Department.

2.3 General Project Scope

The “Project” is located in Yancey County along US19W from SR 1454, Cane River School Road to SR 1386, Piney Hill Road. The project includes repairs to SR 1411, Little Creek Road and SR 1425, Phillips Road and the repair or replacement of numerous bridges and culverts. The Project will provide for permanent repairs of the highway in this area and may involve re-establishing the stream location along the highway in that area.

The project work includes, but is not limited to:

- Design services, including but not limited to:
 - Extensive geotechnical work that could include rock/slope stabilization
 - Re-establishment of the stream location
 - Maintenance of traffic in a high-volume area
 - Roadway Design, Hydraulic Design, Signing
 - Erosion and Sedimentation Control
 - Utility coordination and design
- Construction services (presuming acceptable GMP and/or lump sum), including but not limited to:
 - Construction
 - Quality Control
 - Utility construction
 - Construction management
 - Construction surveys
 - Subcontracting and DBE compliance
 - As-built plans

Construction Engineering Inspection will be provided by the NCDOT Division personnel or will be performed under a separate contract.

2.4 General Stipulations

The Design-Build Team herein acknowledges that it has carefully examined the location of the proposed work to be known as Contract No. C205150; has carefully examined this Master Agreement and all addendums thereto, specifications, special provisions, the form of contract, and the forms of contract payment bond and contract performance bonds, which are acknowledged to be part of the Contract Documents; and thoroughly understands the stipulations, requirements and provisions. The undersigned Design-Build Team agrees to be bound upon their execution of the Contract Documents and including any subsequent award to them by the Secretary of Transportation in accordance with the Contract Documents to provide the necessary surety letters, and/or contract payment bond and contract performance bond within the timeframes as stipulated therein.

The undersigned Design-Build Team further agrees to provide all necessary materials, machinery, implements, appliances, tools, labor, and other means of construction, except as otherwise noted, to perform all the work and required labor to design, construct and complete all the work necessary for State Highway Contract No. C205150 in Yancey County by no later than the dates(s) specified in the Master Agreement, Preconstruction Agreement(s), Construction Contract, Early Work Packages, or any other such agreement (“Contract Documents”) contained within this Master Agreement, as amended, in accordance with the requirements of the Engineer, the Contract Documents, and addenda thereto, the 2024 Standard Specifications for Roads and Structures (“Standard Specifications”), specifications prepared by the Department, the Release for Construction Plans and Special Provisions prepared by the Design-Build Team at the prices included in the Contract Documents.

The Design-Build Team shall provide signed and sealed documents prepared by the Design-Build Team, which specifications and plans show the details covering this project and adhere to the items noted above.

The Design-Build Team acknowledges that project documents furnished by the Department are preliminary and provided solely to assist the Design-Build Team in the development of the project design. Unless noted otherwise in the Contract Documents, the Department does not warrant or guarantee the sufficiency or accuracy of any information furnished by the Department.

Although the Department may provide certain preliminary designs for this project, unless noted otherwise in the Contract Documents, the Design-Build Team shall assume full responsibility, including liability, for the project design, including the use of portions of the Department design, modification of such design, or other designs as may be submitted by the Design-Build Team. The Design-Build Team shall be fully and totally responsible for the accuracy and completeness of all work performed by the Design-Build Team under this contract, and shall indemnify and hold the Department harmless for any additional costs and all claims against the Department or the State which may arise due to errors or omissions of the Department in furnishing preliminary project designs and information, and of the Design-Build Team in performing the work.

The published volume entitled North Carolina Department of Transportation, Raleigh, Standard Specifications for Roads and Structures, January 2024, as well as, all design manuals, policy and

procedures manuals, and AASHTO publications and guidelines referenced in this Master Agreement, with all amendments and supplements thereto, are by reference, incorporated and made part of this contract; that, except as may be modified in the Contract Documents, all the design and construction included in this contract shall be done in accordance with the documents noted above and under the direction of the Engineer.

There shall be no assignment, subletting or transfer of the interest of the Design-Build Team in any of the work covered by the Contract without the written consent of the State, except that the Design-Build Team may, with prior written notification of such action to the State, sublet property searches and related services without further approval of the State. Subcontracting construction work shall be in accordance with the Design-Build Team's subcontracting plan.

The Contract Documents are valid only when signed either by the Contract Officer or such other person as may be designated by the Secretary to sign for the Department of Transportation. The conditions and provisions herein cannot be changed except by written approval as allowed by the Contract Documents.

2.5 North Carolina Public Records Act

The Design-Build Team is encouraged to familiarize themselves with the North Carolina Public Records Act, North Carolina General Statute § 132-1 et seq. In the event the Proposer submits any documents which the Proposer believes are not subject to disclosure pursuant to the aforementioned Act, it must conspicuously mark each document "CONFIDENTIAL" or "CONFIDENTIAL TRADE SECRETS". All unmarked pages will be subject to release in accordance with the North Carolina Public Records Act. Proposers should be prepared, upon request, to provide justification of why any or all marked materials should not be disclosed under the aforementioned Act.

The Design-Build Team acknowledges and agrees that the Progressive Design-Build contracting method may involve participation of an Independent Cost Estimator and may involve disclosure to the Independent Cost Estimator in the ordinary course of materials marked "CONFIDENTIAL". The Department shall require the Independent Cost Estimator to agree, by contract with the Department, by separate agreement with the Design-Build Team, or otherwise, to: (a) keep materials marked "CONFIDENTIAL" confidential and not disclose any work product (and Proprietary Intellectual Property) received under this Agreement to any Person other than the Department or its agents engaged on the Project and (b) to include such language in all of the Independent Cost Engineer's subcontracts for the Project.

2.6 NCDOT Reservations - Termination

2.6.1 Prior to Preconstruction Agreement

Prior to the execution of a Preconstruction Agreement, the Department reserves the right to cancel or forego signing this Master Agreement at any time without compensation to the Design-Build Teams.

2.6.2 Prior to Construction Contract or First Early Work Package

After execution of a Preconstruction Agreement, and prior to the execution of a Construction Contract or Early Work Package, the Department may terminate this Master Agreement and/or Preconstruction Agreement and not proceed to a Construction Contract or any Early Work Package. The Preconstruction Agreement will include provisions for termination of that agreement including payment for work performed to date under the Preconstruction Agreement. In such case the work product generated by the Design-Build Team will be the intellectual property of the Department and may be used for any future project procurement. Notwithstanding anything herein, if the Department elects to terminate the Design Build Team prior to completion of final design, the Design-Build Team shall be released from all liability (under contract, tort, or any other legal theory) that may arise in relation to any Department use of the preliminary designs (unsealed plans and documents) produced by the Design-Build Team.

In addition to the Termination provisions contained in the Standard Specifications and this Master Agreement, the Department may terminate this Master Agreement and/or Preconstruction Agreement in the event that (1) the Department and the Design-Build Team cannot concur on the Guaranteed Maximum Price or Construction Agreed Price at any stage of the Project; (2) that the Design-Build Team is not negotiating in good faith in the reasonable discretion of the Department; (3) fails to divulge pertinent information regarding pricing; or (4) does not allow for review of pricing materials on an Open Book Basis in the reasonable discretion of the Department.

2.6.3 After Execution of Construction Contract or First Early Work Package

After execution of the Construction Contract or first Early Work Package, the Department may terminate this Master Agreement and/or the Construction Contract, any Early Work Package, or Preconstruction Agreement, in accordance with the NCDOT Standard Specifications for Roads and Structures and as may be amended in this Master Agreement. In such case the work product generated by the Design-Build Team will be the intellectual property of the Department and may be used for any future project procurement. Notwithstanding anything herein, if the Department elects to terminate the Design Build Team prior to completion of final design, the Design-Build Team shall be released from all liability (under contract, tort, or any other legal theory) that may arise in relation to any Department use of the preliminary designs (unsealed plans and documents) produced by the Design-Build Team.

In addition to the Termination provisions contained in the Standard Specifications and this Master Agreement, the Department may terminate this Master Agreement and/or the Construction Phase Contract, any Early Work Package, or Preconstruction Agreement in the event that (1) the Department and the Design-Build Team cannot concur on the Guaranteed Maximum Price or Construction Agreed Price at any stage of the Project; (2) that the Design-Build Team is not negotiating in good faith in the reasonable discretion of the Department; or (3) the Design-Build Team fails to divulge pertinent information regarding pricing or (4) does not allow for review of pricing materials on an Open Book Basis in the reasonable discretion of the Department.

SECTION 3 – SCHEDULE

3.1 Project Schedule

Unless otherwise waived by the Engineer and documented in the applicable Contract Document, for each Early Work Package and Construction Contract, the Design-Build Team shall prepare a progress schedule in accordance with Article 108-2 of the Standard Specifications and as modified in Section 15 of this Master Agreement. The Design-Build Team shall also produce and maintain a corresponding Schedule of Values in accordance with Article 109-4(A) of the Standard Specification as modified in Section 15 of this Master Agreement.

In addition to the progress schedule, the Design-Build Team shall develop and maintain a Critical Path Model in accordance with Section 11.17 of this Master Agreement.

3.2 Contract Time

The date of availability for this Master Agreement is the date of execution by the Department.

The date of availability for the Preconstruction Agreement, or amendment thereto, will be the Notice to Proceed date issued by the Department.

The date of availability for the Construction Contract or Early Work Package, or amendment thereto, will be as specified in that Contract Document.

The final Completion Date for this Master Agreement will be consistent with the date cited as the Intermediate Completion Date in the most recently executed Early Work Package, and ultimately the final Completion Date cited in the final Construction Contract. The amount of liquidated damages that may be assessed for Design-Build Team's failure to achieve a given Intermediate Completion Date, Substantial Completion Date or the final Completion Date will be specified in the applicable Construction Contract, Early Work Package, or amendment thereto. Liquidated damages for the Intermediate Completion Date specified in the Early Work Package will apply; no further liquidated damages for the final Completion Date will apply until such time that the Construction Contract is executed.

3.3 Substantial Completion

When the special provisions provide for a reduction in the rate of liquidated damages for time or an intermediate contract time after the Work is substantially complete, the Work will be considered substantially complete when the following requirements are satisfied:

1. Through traffic has been placed along the project or along the Work required by an intermediate contract time and the Work is complete to the extent specified below, and all lanes and shoulders are open such that traffic can move unimpeded at the posted speed. Intersecting roads and service roads are complete to the extent that they provide the safe and convenient use of the facility by the public.

2. The final layers of pavement for all lanes and shoulders along the project or along the Work required by an intermediate contract time are complete.
3. Excluding signs on intersecting roadways, all signs are complete and accepted.
4. All guardrails, drainage devices, ditches, excavation and embankment are complete.
5. Remaining Work along the project consists of permanent pavement markings, permanent pavement markers or incidental construction that is away from the paved portion of the roadway.

Upon apparent substantial completion of the entire project or the Work required by an intermediate contract time, the Engineer will make an inspection of the Work. If the inspection discloses the entire project or the Work required by an intermediate contract time is substantially complete, the Engineer will notify the Design-Build Team in writing that the Work is substantially complete. If the inspection discloses the entire project or the Work required by an intermediate contract time is not substantially complete, the Engineer will notify the Design-Build Team in writing of the Work that is not substantially complete. The entire project or the Work required by an intermediate contract time will not be considered substantially complete until all of the recommendations made at the time of the inspection have been completed in accordance with the Contract Documents.

3.4 Intermediate Contract Times

Intermediate Contract Times may be established for portions of the Work, including completion of Early Work Packages. Intermediate Contract Times and associated liquidated damages, and/or incentives will be as specified in the applicable Construction Contract, Early Work Package, or amendments thereto.

3.5 Liquidated Damages

By execution of a Construction Contract, Early Work Package, or amendment thereto, the Design-Build Team agrees and acknowledges that the liquidated damages specified in the applicable Contract Document are reasonable in order to compensate the Department for damages it will incur as a result of delays in achieving a given Intermediate Contract Time, Intermediate Completion Date, Substantial Completion Date or the final Completion Date, as applicable. Such damage includes, without limitation, loss of use and benefit of the Project and connecting transportation facilities by the general public as well as additional Department oversight and administrative costs. The Design-Build Team further agrees and acknowledges that these liquidated damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute.

3.6 Payout Schedule

No later than 30 days after the execution of this Master Agreement, the Design-Build Team shall submit a proposed Anticipated Monthly Payout Schedule to the State Contract Officer. The Anticipated Monthly Payout Schedule shall be submitted as an electronic version in Excel

Spreadsheet. The Anticipated Monthly Payout Schedule will be used by the Department to establish the monthly funding levels for this project. The Anticipated Monthly Payout Schedule shall parallel, and agree with, the project schedule as the project schedule evolves. The Anticipated Monthly Payout Schedule shall include a monthly percentage breakdown (in terms of the total contract amount percentages) of the Work anticipated to be completed. The Anticipated Monthly Payout Schedule shall begin with the Date of Availability for this Master Agreement and extend to the final Completion Date.

The Design-Build Team shall submit electronic updates of the Anticipated Monthly Payout Schedule on March 15th, June 15th, September 15th, and December 15th of each calendar year until project acceptance.

3.7 Schedule of Estimated Completion Progress

The Design-Build Team's attention is directed to Section 3.8 entitled *Availability of Funds - Termination of Contracts*. The Department of Transportation's schedule of estimated completion progress for this project, as required by that Standard Special Provision, shall be as follows:

<u>Fiscal Year</u>	<u>Progress (% of Dollar Value)</u>
2026 (07/01/25 - 06/30/26)	9% of Total Amount Bid
2027 (07/01/26 - 06/30/27)	40% of Total Amount Bid
2028 (07/01/27 - 06/30/28)	37% of Total Amount Bid
2029 (07/01/28 - 06/30/29)	14% of Total Amount Bid

In accordance with Article 108-2 of the *Standard Specifications*, as modified by Section 15 of this Master Agreement, the Design-Build Team shall also furnish its own progress schedule. Any acceleration of the progress as shown by the Design-Build Team's progress schedule over the progress as shown above shall be subject to the approval of the Engineer.

3.8 Availability of Funds – Termination of Contracts

General Statute 143C-6-11. (h) Highway Appropriation is hereby incorporated verbatim in this Master Agreement as follows:

“(h) Amounts Encumbered – Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in General Statute 143C-6-11(c). Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be

available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.”

Payment will be made on any contract terminated pursuant to the special provision in accordance with Subarticle 108-13(D), of the North Carolina Department of Transportation *Standard Specifications*, dated January 2024 and as amended in Section 15 of this Master Agreement.

SECTION 4 – NEPA AND PERMITS

4.1 NEPA

The Department is currently in the process of determining the type and level of NEPA documentation required for this project. The Department will prepare the initial NEPA document(s) as well as any re-evaluation or consultation necessitated in the future. The Design-Build Team may be expected to provide information to the Department to inform NEPA and any secondary re-evaluation of the NEPA document; however, the Department and FHWA, as applicable, will be solely responsible for decisions related to, or resulting from, the NEPA process and documentation. In addition, as per federal regulations, final design activities may not commence until after NEPA is complete.

Pursuant to 23 CFR Part 636.109, the comparative merits of all alternatives presented in any NEPA document, including the no-build alternative, will be evaluated and fairly considered. Until any applicable final NEPA disposition and approval is obtained by the Department, no commitment will be made as to any alternative under evaluation in the NEPA process, including the no-build alternative. To comply with the requirements of 23 CFR Part 636.109, this Master Agreement includes the ability to incorporate any environmental commitments identified as part of the NEPA process that the Department determines should be performed by the Design-Build Team as part of the Construction Contract, Early Work Package, or amendments thereto.

The Department reserves the right to terminate this Agreement and any other Contract Document if the no-build alternative is selected, and compensation to the Design-Build Team will be determined in accordance with the Contract Documents.

The Design-Build Team understands and agrees that, unless and until NEPA is complete, during the preconstruction work before the NEPA process is concluded, the work shall be strictly limited to preliminary design engineering and activities and analyses that do not materially affect the objective consideration of alternatives in the NEPA process in accordance with all applicable restrictions and FHWA policies and rules, including FHWA Order 6640.1A and 23 CFR Part 636.109.

The Design-Build Team understands and agrees that, unless and until NEPA is complete, an Early Work Package or the Construction Contract shall not be executed, nor shall any design activities following preliminary design (including the preparation of the Final Plans or detailed specifications for the performance of Construction Work) be performed until such NEPA disposition and approval.

4.2 Permits

For certain emergency work, environmental permits may not be required for certain construction operations to commence. The Department may need to document any quantities placed in the water for 404/401 permitting. This documentation will be handled by NCDOT.

For non-emergency work, permit applications will be submitted by the Department; however, it is anticipated that the Design-Build Team will provide extensive support and information for the permit applications.

The division of duties between the Department and the Design-Build Team as relates to permit application development will be as specified in the relevant Contract Document.

SECTION 5 – PRECONSTRUCTION PHASE

5.1 Preconstruction Scope

The design work consists of the preparation of all plans and special provisions, or other preconstruction services as will be as specified in the applicable Contract Document or amendment thereto. The Design-Build Team shall certify all plans, specifications, estimates and engineering data furnished by the Design-Build Team.

The Design-Build Team acknowledges that they are fully and totally responsible for the project design, including the use of portions of the Department design, modification of such design, or other designs as may be provided to, or submitted by, the Design-Build Team, unless noted otherwise elsewhere in the Contract Documents. Unless otherwise specified in a Preconstruction Agreement, Early Work Package or the Construction Contract, the Design-Build Team further acknowledges that they are fully and totally responsible for the accuracy and completeness of all Work it performs, including the determination of the accuracy of the information provided by the Department, and to the extent that the Design-Build Team chooses to rely on such information, subject to the foregoing exceptions in the relevant Preconstruction Agreement, Early Work Package or Construction Contract. The Design-Build Team shall save the State harmless and shall be fully liable for any additional costs and all claims against the State which may arise due to errors, omissions and negligence of the Design-Build Team in performing the Work required by this contract.

5.2 Design Standards

Design references developed and published by NCDOT and those developed and published by other agencies and adopted for use by NCDOT which are to be used in the design of this project may be obtained by contacting the Contract Standards and Development Unit within the Field Support Division. Standard prices for materials, which the Department normally sells for a fee, will be in effect. The Design-Build Team shall be responsible for designing in accordance with the applicable documents and current revisions and supplements thereto.

Unless allowed elsewhere in the Contract Documents, the designs shall meet all appropriate latest versions of AASHTO *Policy on Geometric Design of Highways and Streets*, AASHTO *LRFD Bridge Design Specifications*, *Manual of Uniform Traffic Control Devices* and all NCDOT design policies that are current as of the Effective Date of this Master Agreement. All documents referenced in the Contract Documents shall be the edition/version, including all interim revisions, in effect at the Effective Date of this Master Agreement, unless otherwise stipulated in a Preconstruction Agreement, Construction Contract, Early Work Package or an amendment thereto.

All designs shall be in Microstation format using Geopak software (current version used by the Department) or Bentley Open X design software. If the Design-Build Team elects to use ORD, the Department will not honor any requests for additional contract time or compensation for any effort required to complete the designs using Open X design software.

All Work by the Design-Build Team shall be performed in accordance with the Contract Documents and in accordance with the published regulations and standards of the North Carolina Department of Transportation, and in conformity with the standards adopted by the American Association of State Highway Transportation Officials and approved by the U.S. Secretary of Transportation as provided in Title 23, U.S. Code, Section 109 (b). The decision of the Engineer / State / Department shall control in all questions regarding location, type of design, dimension of design, and similar questions.

Alternate designs, details and / or construction practices (such as those employed by other states, but not standard practice in NC) are subject to Department review and approval and will be evaluated on a case-by-case basis.

If the applicable design codes, guidelines, standards and policies have desirable versus minimum values, the Design-Build Team shall use the desirable values unless noted otherwise elsewhere in the Contract Documents. Similarly, in the event of conflicting design parameters in the requirements herein and the applicable guidelines, standards and policies, the proposed design shall adhere to the most conservative values unless otherwise agreed upon by the Department and stipulated in the Contract Documents. Unless otherwise agreed to by the Department, the Department's acceptance of plans, reports, calculations, analyses, etc. shall not relieve the Design-Build Team of any obligations to design the project in accordance with the Contract Document requirements and all applicable guidelines, standards and policies.

5.3 Design Schedule and Submittals

Major design milestones and required design submittals shall be identified as activities on the progress schedule maintained by the Design-Build Team. This schedule shall be submitted to the Alternative Delivery Unit and the Engineer concurrently with the first design submittal, or within 45 days of the execution of the Master Agreement (or first Early Work Package), whichever is earlier. The schedule shall be revised and resubmitted as design milestones change or as directed by the Alternative Delivery Unit.

Unless stipulated otherwise in the Scope of Work in a Preconstruction Agreement, or amendment thereto, submittals will be reviewed within the timeframe the Design-Build Team indicates on the design submittal or ten working days (15 days for temporary structures, overhead sign assemblies, MSE walls, FEMA compliance documents, curved steel girder working drawings and temporary shoring), whichever is greater. All review timeframes shall begin on the first working day after the Department receives the submittal, regardless of the time the submittal is received. Unless agreed to by the Department, all submittals shall be prepared and submitted in accordance with the *Alternative Delivery Submittal Guidelines*, which by reference are incorporated and made a part of this Master Agreement.

All submittals shall be made simultaneously to the Alternative Delivery Unit and the Engineer. The Department will not accept subsequent submittals until prior submittal reviews have been completed for that item. The Design-Build Team shall prioritize multiple submittals that are submitted concurrently. All submittals shall include pertinent Special Provisions. No construction

work shall be performed prior to the Department’s review and acceptance of the design submittals associated with that Work.

For all design disciplines, the Design-Build Team shall inform the Alternative Delivery Unit, in writing, of all proposed revisions to the previously reviewed submittals, that are not in response to a Department comment. Failure to provide the aforementioned written notification of changes with the appropriate design submittal could result in the Department 1) suspending the design submittal until documentation is provided or 2) returning the unreviewed design submittal to the Design-Build Team and requiring a resubmittal.

Unless noted otherwise elsewhere in the Contract Documents, all proposed design changes / revisions shall be subject to the Department’s review and acceptance, including but not limited to changes to RFC Plans.

The Design-Build Team shall submit all Release for Construction Plans in accordance with the NCDOT e-Signature requirements, including but not limited to providing signed and sealed searchable .pdf files. Reference the website noted below for additional information:

<https://connect.ncdot.gov/business/consultants/Pages/Guidelines-Forms.aspx>

5.4 Preconstruction Agreement

Each Preconstruction Agreement will be executed separately. The initial Preconstruction Agreement will be a separate contract entirely. Each subsequent Preconstruction Agreement is considered a supplemental agreement to this Master Agreement. Each such Preconstruction Agreement will thereby, by reference, be incorporated into the Contract Documents and included on a listing form similar to that included in Appendix A as maintained by the NCDOT Alternative Delivery Unit.

5.4.1 Preconstruction Agreement Term

A Preconstruction Agreement may be executed before or after the Effective Date of this Master Agreement. The initial Preconstruction Agreement will typically include initial coordination activities, early site investigations and preliminary engineering. Multiple Preconstruction Agreements are possible and each shall remain in effect until the earlier of (1) the expiration of the service period in the Preconstruction Agreement, (2) termination in favor of execution of a new restated and amended Preconstruction Agreement, (3) such time when it is mutually agreed upon that the scope of work covered by the Preconstruction Amendment is complete or (3) termination of this Master Agreement.

5.4.2 Preconstruction Agreement Content

Generally, the Preconstruction Agreement will follow the template for a NCDOT professional services agreement and provide greater detail in regard to the scope of the preconstruction services. The Preconstruction Agreement will include (1) typical preconstruction services; (2) collaborative

preconstruction services; (3) schedule-related preconstruction services; (4) cost-related preconstruction services; and (5) pricing terms for preconstruction services as outlined herein:

(1) Typical Preconstruction Services

Typical preconstruction services may take the form of typical NCDOT Design-Build RFP Scopes of Work and include:

- Design Services required and other preconstruction services required.
- Any variations in design submittals, design references, codes, standards or review timeframes from those stipulated in this Master Agreement.
- Other preconstruction services such as right-of-way acquisition services, utility coordination, geotechnical investigations, surveys, and permit application preparation.
- Any preconstruction activities to be performed by the Department.
- Materials or information to be provided by the Department.
- NEPA commitments, if complete.

(2) Collaborative Preconstruction Services

In addition to the above activities typically performed by professional services firms on Design-Build projects, the Design-Build Team will engage in collaborative preconstruction activities as outlined in the Preconstruction Agreement which may include:

- Design review workshops to value engineer the project.
- Innovation management through market scans for innovative products, processes, and methods to improve the project.
- Constructability and feasibility reviews for tools, methods, techniques, and technology available to improve construction safety, quality or cost.
- Exploration of alternative materials or equipment options along with current pricing data and availability to assist the Department in making informed design decisions early.
- Assistance in shaping the construction scope of the project, generating design alternatives and pricing as needed.

(3) Schedule-Related Preconstruction Services

- Development of initial project schedule for preconstruction.
- Management of the schedule for preconstruction activities
- Continuous examination of project design for opportunities to accelerate construction.
- Development of design work sequence in concert with construction schedule to enhance opportunity for Early Work Packages.
- Development of construction phasing to determine jointly with Department the construction schedule, traffic phasing and applicable liquidated damages to inform the Construction Contract or Early Work Packages.

(4) Construction Cost-Related Preconstruction Services

In regard to pricing, the Design-Build Team will collaborate closely to develop cost-related preconstruction services to ultimately inform the Guaranteed Maximum Price or Construction Agreed Price of any Early Work Package. These activities will be specified in the Preconstruction Agreement and may include:

- Development of a baseline cost based on initial concepts.
- Creation of a risk register to identify, track and mitigate risk and the development of a Risk Management Plan to monitor and control risk throughout preconstruction and construction.
- Development of iterative cost estimates (e.g. 60% and 90% cost estimates).
- Conduct Quantity and Price Reconciliation Meetings and cost engineering reviews to ensure Department concurrent on iterative cost estimates.
- Verification of take-off quantities jointly with the Department.
- Development and maintenance of cost risk analyses to inform the Department of the work items most likely to exceed anticipated costs.
- Material cost forecasting to predict material cost escalation to inform the Department and the decision for Early Work Packages.
- Development of recommendations for Early Work Packages to lock in early pricing.
- Solicitation of subcontractor and supplier quotes to ensure adequate competition, satisfaction of DBE goals, and to inform pricing of any Contract Document.

In addition, the initial project management duties performed under the Preconstruction Agreement shall include the development of a DBE Participation Plan to achieve the goal stated in this Master Agreement. At a minimum, the plan shall include the following items:

- (A) Staff assigned to solicit participation and document all efforts related to DBE utilization on this contract, including but not limited to, outreach and good faith efforts, training, tracking and submission of monthly reports, and coordinating with the Department on replacement requests.
- (B) A detailed outreach plan, initially submitted for the entire project, and updated as each work package is submitted.
- (C) A list of work anticipated to be self-performed.
- (D) A list of work anticipated to be subcontracted.
- (E) Identification of subcontract work that is likely to be performed by the DBE.
- (F) Identification of opportunities in other areas such as material suppliers, manufacturers, or support services.

5.4.3 Preconstruction Phase Order of Precedence

In the event of any conflict among the Contract Documents in regards to the preconstruction work

performed under a Preconstruction Agreement executed after the execution of this Master Agreement, the order of precedence is as follows:

- a) Preconstruction Agreement Amendment(s)
- b) The applicable Preconstruction Agreement
- c) This Master Agreement

5.5 Preconstruction Agreement Amendments

In the event that additional preconstruction work is needed, or modifications to the prescribed work need to occur, then either a new Preconstruction Agreement will be created, amending and restating the previous Preconstruction Agreement, or a Preconstruction Agreement amendment may be made.

Notable changes in scope of work or method of payment will typically be addressed through a new Preconstruction Agreement. Changes that do not notably affect the scope of work will typically be made through a Preconstruction Phase Agreement amendment. Each such Preconstruction Agreement amendment will thereby, by reference, be incorporated into the Contract Documents and included on a listing form similar to that included in Appendix B as maintained by the NCDOT Alternative Delivery Unit.

Either party can request a modification to a Preconstruction Agreement at any time.

Preconstruction Agreement amendments are not necessary to revise any professional services firms approved overhead or salary rates used in Preconstruction Agreements.

5.6 Preconstruction Phase Pricing

5.6.1 Initial Cost Plus Fee Preconstruction Agreement

Generally, the initial payment for the initial Preconstruction Agreement will be made on a Cost Plus Fee basis. In such case, hourly rates, overhead, cost of capital, a professional services firm “design fee” and a contractor’s Fixed Markup will be used to negotiate a not to exceed amount for the initial Preconstruction Agreement.

For professional services firms, the approved NCDOT rates, audited overhead rate, and cost of capital will be used as well as a design fee of 15%.

For other Design-Build Team members, documented labor rates will be used along with a multiplier to compensate the Design-Build Team for their labor burden, such as insurance, taxes, and employee benefits as well as a Fixed Markup as described in Section 5.6.3.

In addition, allowable direct expenses will be as specified in the Preconstruction Agreement.

5.6.2 Subsequent Preconstruction Agreements or Amendments

After completion of NEPA, and once the design basis is sufficiently established, the Department will consider converting the cost-plus fee structure to a lump sum price for remaining preconstruction design and preconstruction management services.

The standard NCDOT manday forms are available for use to assist in the negotiations, regardless of payment structure (lump sum or cost-plus).

Once an agreement is reached on the Preconstruction Agreement in regard to the scope, terms, Fixed Markup, and total fees, and the FHWA concurs on price reasonableness, the Preconstruction Agreement may be executed.

5.6.3 Fixed Markup

The Fixed Markup aims to compensate the contractor for profit plus the portion of home office overhead or general and administrative expenses allocated to the project. Home office overhead is defined as all auditable costs that are allocated to all of the contractor's ongoing projects, including insurance that is maintained by the Team as a general cost of doing business, excluding insurance that is project specific or covered under labor and equipment costs. The profit component of the Fixed Markup may include any bonuses and incentives but excludes all costs associated with direct and indirect project construction activities, including but not limited to, risk or contingency.

The Fixed Markup will be used in both cost-plus and lump sum Preconstruction Agreement negotiations and will be included with the rates in Appendix B of the Preconstruction Agreement. It is anticipated that a different Fixed Markup will be used for Preconstruction Agreements as compared to the Fixed Markup used for Early Work Packages and the Construction Contract. The Fixed Markup for Preconstruction Agreements will not be applied to the professional services fees, only to the contractor's efforts.

The Fixed Markup will be applied to and therefore should not be calculated to take into account any project/field direct or indirect costs. Examples of indirect and direct costs that may not be reflected in the calculation of the Fixed Markup include:

(1) Project/Field Indirect Costs

- Job Supervision and Overhead: Wages including benefits, payroll insurance and taxes for onsite management, supervision, engineers, safety personnel, quality control staff, administration staff, and other staff as approved by the Department.
- Cost of construction survey and GPS work.
- Ownership or rental of building, maintenance, removal, utilities, office and engineering expendables, furniture, computers and infrastructure, photographs.
- Insurance and Taxes: Insurance costs excluding those included in direct labor or equipment costs and project specific insurance costs such as railroad insurance. Taxes excluding those included in direct labor or equipment costs. Sales tax should be included with the applicable item taxed.

- Cost of ownership or rental, set up, maintenance and removal of such buildings as owner's office, warehouses, first aid building, and other miscellaneous appurtenances.
- Personnel Expenses: Small tools and supplies, safety expendables, drug screen testing, training, physicals, and hiring expense. Include any per-diem costs for craft or indirect personnel.
- Utilities: Site utilities such as temporary electric, water, and sanitary.
- Mobile Equipment: Overhead, vehicles, maintenance equipment and personnel and general service equipment and personnel (e.g flatbeds and forklifts if not in direct cost).
- Mobilization: Cost of transportation of equipment and other items for move in, move out, set up, and take down, including cost of personnel moves and related expense.
- Construction Plant: Include site fences, parking areas, material yards, temporary access, and other such special construction not included in direct costs.
- Quality Control: Cost of QC labor, equipment, and supplies and outside services and Design-Build Team-hired personnel with site overhead wages.
- Bonds: Include cost of payment and performance bond or other guaranties as specified or allowed including the cost of subcontract or material bonds if paid as part of the Subcontracted Work.
- Escalation: Estimated cost of items for which firm pricing cannot be obtained, including increases in craft and field indirect wage rates and fringe benefits whether by agreement or estimated.

(2) Project/Field Direct Costs

- Labor, including wages and add-ons including overtime, vacation pay, and all fringe payments such as health and welfare, pensions, and any other that may be included in union agreement or as paid to both craft and staff employees. Payroll insurance including Worker's Compensation and General Liability if based on labor amounts. Payroll taxes including FICA and State and Federal unemployment.
- Permanent materials incorporated into the construction Work. To include estimated loss, waste, and overruns, sales tax and shipping.
- Construction expendable materials including non-permanent materials, temporary facilities, small tools, formwork, temporary construction, office supplies, services, and material-related insurance and taxes.
- Rental or ownership charge of both company-owned and outside rentals, equipment-related insurance, sales tax on any rentals, repair parts, tires and tracks, contractor's repair labor, services and fuel, oil and grease.
- Subcontracted Work including contracted trucking.

5.7 Risk Register

The Design-Build Team shall develop a risk register tool and submit it to the Department for concurrence within 21 days after the execution of the first Preconstruction Agreement, or later as permitted by the Department.

The risk register will be used collaboratively between the Design-Build Team and the Department to openly discuss risks to the project quality, cost or schedule. The risk register will include all items of risk whether those risks are entirely owned by the Department, entirely owned by the Design-Build Team, shared between the two, or yet to be determined. The risk shall also track opportunities.

At a minimum the risk register shall have fields for the following:

- Risk ID #
- Status
- Work category (e.g. Right-of-way or Utilities)
- Date identified
- Date resolved
- Risk or opportunity classification
- Description
- Qualitative analysis on impact on quality, cost, and schedule
- Quantitative analysis on impact on quality, cost, and schedule
- Mitigation Strategy
- Ownership of risk (Design-Build Team, Department, shared, or yet to be determined)
- Individual responsible for monitoring and reporting on that risk

While the risk register will be an important tool for both parties, and ownership of risk will be identified in the risk register, the Risk Register itself is not considered a Contract Document. The Department and the Design-Build Team shall work in good faith to ensure that each Contract Document accurately reflects the ownership of risk contained in the Risk Register as it evolves.

SECTION 6– CONSTRUCTION PHASE

6.1 Construction Scope

Construction shall include, but not be limited to, all necessary clearing, grading, roadway, drainage, structures, surveys, pavement, geotechnical stabilization or treatment, traffic management, signing, utility coordination and relocation, and erosion and sediment control work items for the Project and as otherwise stipulated in the Construction Contract. Construction engineering and management shall be the responsibility of the Design-Build Team.

Construction Engineering and Inspection will be performed by the Department or a third party contracted by the Department.

Construction shall not begin until after NEPA is complete and the pertinent RFC Plans and Special Provisions have been developed by the Design-Build Team and accepted by the Department.

6.2 Construction Standards

Construction shall comply with 2024 NCDOT *Standard Specifications for Roads and Structure*, this Master Agreement, the Construction Contract, or amendments thereto, accepted RFC Plans and Special Provisions developed by the Design-Build Team, and any special provisions in effect on the Effective Date of this Master Agreement unless otherwise stipulated in the Construction Contract or amendments thereto.

6.3 Subcontracting Plan

The Design-Build Team shall prepare and submit to the Department a Subcontracting Plan which includes:

- Details of the Design-Build Team’s contracting plans and Subcontractor plans;
- Procurement and competitive selection processes;
- Approach to advertising subcontracting opportunities; and
- Information regarding subcontractor availability and local economic conditions.

The Subcontracting Plan may include or be separate from the DBE Participation Plan.

6.4 Construction Contract

The Department will draft the Construction Contract with input from the Design-Build Team prior to the finalization of the Construction Agreed Price (or GMP). The Construction Contract will likely include typical NCDOT Design-Build Scopes of Work as well as the following information:

- The scope of the design and other preconstruction work needed to complete the Project and not otherwise included in a Preconstruction Agreement, Early Work Package, or amendment thereto
- Construction services required

- The RFC Plans and Special Provisions developed by the Design-Build Team and accepted by the Department, incorporated by reference
- NEPA commitments, as applicable, whether directly included or incorporated by reference
- Third party involvement or restrictions
- Information or services to be provided by the Department
- DBE listing forms
- Construction Agreed Price (or GMP), including payment terms
- Contract Completion Date and Substantial Completion Date including Intermediate Contract Times and Liquidated Damages
- Payment and Performance Bonds
- Gift Ban and Debarment Certification forms
- Itemized Proposal Form and Signature Sheets

The Construction Contract is considered a supplemental agreement to this Master Agreement. The Construction Contract will thereby, by reference, be incorporated into the Contract Documents and included on a listing form similar to that included in Appendix C as maintained by the NCDOT Alternative Delivery Unit.

6.5 Construction Contract Supplemental Agreements

Supplemental agreements to the Construction Contract may be made in accordance with the Standard Specifications, as may be amended in this Master Agreement. Each supplemental agreement to the Construction Contract will also be considered a supplemental agreement to this Master Agreement. Each such supplemental agreement to the Construction Contract will thereby, by reference, be incorporated into the Contract Documents and included on a listing form similar to that included in Appendix C as maintained by the NCDOT Alternative Delivery Unit.

6.6 Construction Phase Pricing

The Design-Build Team shall collaborate with the Department to maximize scope, value, and quality within the Project budget. Both parties will emphasize collaboration and transparency, and create value through integrity, fairness, accountability, innovation, and risk management.

During the Preconstruction Phase, the Design-Build Team will meet with the Department and the Independent Cost Estimator to discuss and agree on how the team will develop and evaluate prices. In addition to reviewing the overall pricing strategy, the Design-Build Team will seek agreement on how certain elements of price will be handled, such as:

- Discussion of items that may be broken out from the otherwise lump sum Construction Agreed Price (or GMP) to manage risks and lower overall Project cost;
- Design-Build Team's Fixed Markup (as per Section 5 of this Master Agreement and as may be adjusted for the Construction Contract or Early Work Package(s);
- Labor and equipment rates;
- Anticipated Subcontractor opportunities versus self-performed Work; and
- Number of pricing milestones.

The Design-Build Team shall develop a cost model on an Open Book Basis. The Design-Build Team shall submit the proposed cost model to the Department for review and comment. The proposed cost model shall be able to address, at a minimum, the following topics:

- Quantity take-offs;
- Material costs, subcontracted Work costs, equipment rates, labor rates (labor rates shall include employee benefits, payroll taxes, and other payroll burdens), crew sizes, shifts per day, hours per shift, and production rates for direct costs;
- Risk assumptions, assignment of risks, and schedule and cost contingencies associated with each risk
- Costs to mobilize equipment and materials to construct the Project and other facility related costs necessary for the proper execution of the Work;
- Quotes from Subcontractors and Suppliers; and
- Field indirect costs, bonds, taxes, and insurance.

In accordance with the cost model, the Design-Build Team shall develop and submit a price at the pre-determined milestones. The Department and the Independent Cost Estimator will prepare estimates for the same scope of work included in the proposed Construction Contract. A comparison will be made both at the line item level and at the total lump sum level.

The Design-Build Team shall meet with the Department and the Independent Cost Estimator to discuss the assumptions for items, as agreed to by the parties that may contribute to a discrepancy in the total cost of each item. The goal of these meetings will be to clarify and resolve differences, where possible, between estimates until concurrence on the Guaranteed Maximum Price or Construction Agreed Price, as applicable, can be reached.

6.6.1 Guaranteed Maximum Price

After completion of NEPA, and once the design basis is sufficiently established, a Guaranteed Maximum Price (GMP) may be established for the project. The concurrence of the Department and the FHWA, if applicable, will be required in regard to any GMP prior to contract execution for final design and construction.

In lieu of a Guaranteed Maximum Price, the Department may instead require periodic Rough Order of Magnitude cost estimates to track overall project costs and budget.

6.6.2 Construction Agreed Price

Once the design is sufficiently advanced, the Department will request the Design-Build Team to generate a final lump sum price for construction and remaining preconstruction efforts. The concurrence of the Department and the FHWA, if applicable, will be required on the lump sum amount prior to Construction Contract execution or conforming the Construction Contract to replace the Guaranteed Maximum Price with the Construction Agreed Price. The Department will likely engage an Independent Cost Estimator to assist in negotiation and validation of the Construction Agreed Price.

The Construction Agreed Price is the summation of all contract line item amounts, which include all direct costs, indirect costs, and fees, as negotiated between the Design-Build Team and the Department, for all Work scoped in the Construction Contract and to be performed in accordance with this Master Agreement and other Contract Documents. excluding contractual price adjustments for fuel and materials and/or liquidated damages assessed.

The Contractor assumes all risk with the performance of the bid items, including management of its subcontractors, suppliers, and any associated cost impacts over and above the Construction Agreed Price unless otherwise stipulated in the Construction Contract. Unless otherwise stipulated in the Construction Contract, the Construction Agreed Price will not be adjusted except for the following reasons:

- Executed supplemental agreements or force accounts that provide adjusted compensation or additional time to the contractor. The adjustment to the Construction Agreed Price will be reflective of the value of the supplemental agreement and will not be based on final quantities associated with the agreement. For force account work, the Construction Agreed Price will be adjusted by the final value of the force account work.
- Price adjustments made in accordance with Section 10 of this Master Agreement.
- Assessment of Liquidated Damages in accordance with Article 108-11 of the Standard Specifications.
- Approved claims providing additional compensation or additional time.
- Non-lump sum line item overruns shall not constitute an increase in the Construction Agreed Price unless otherwise stipulated in the Construction Contract or mutually agreed between the Parties.

6.7 Concurrence on Construction Agreed Price (or GMP)

The Department will compare the proposed Construction Agreed Price (or GMP if used), as applicable with the Engineer's Estimate and the Independent Cost Estimator's estimate to assure the reasonableness of the proposed Construction Agreed Price (or GMP). Upon Department and FHWA concurrence with the proposed, or subsequently negotiated, Construction Agreed Price (or GMP), the Construction Contract will be executed.

In the event that an acceptable Construction Agreed Price (or GMP) cannot be reached, the Department reserves the right to advertise the construction project in any competitive procurement process permitted by law. In such case, the Design-Build Team will be precluded from bidding on this subsequent procurement, work performed to date will be considered the intellectual property of the Department, and the Department reserves the right to retain the Design-Build Team's lead design firm and/or their subconsultants under separate contract to complete the design and/or provide construction design services directly for the Department.

Notwithstanding anything herein, if the Department elects to terminate the Design Build Team prior to completion of final design, the Design-Build Team shall be released from all liability (under contract, tort, or any other legal theory) that may arise in relation to any Department use of the preliminary designs (unsealed plans and documents) produced by the Design-Build Team.

SECTION 7 – EARLY WORK PACKAGES

7.1 Early Work Package Scope

Construction included in an Early Work Package will be limited to certain construction activities and/or areas of the Project. Early Work Packages may be generated to initialize construction activities while final design is prepared or for preparation for construction items or materials with long lead times.

Construction shall not begin until after NEPA is complete and the pertinent RFC Plans and Special Provisions have been developed by the Design-Build Team and accepted by the Department. In certain cases, known activities may occur under an Early Work Package that so not require RFC Plans.

7.2 Early Work Package Construction Standards

Construction shall comply with 2024 NCDOT *Standard Specifications for Roads and Structure*, this Master Agreement, the Early Work Package, or amendments thereto, accepted RFC Plans and Special Provisions developed by the Design-Build Team, and any special provisions in effect on the Effective Date of this Master Agreement unless otherwise stipulated in the Early Work Package or amendments thereto.

7.3 Early Work Package Content

The Department will draft the Early Work Package with input from the Design-Build Team. The Early Work Package will likely include modified NCDOT Design-Build Scopes of Work as well as the following information:

- The scope of the design and other preconstruction work needed to complete the Early Work Package and not otherwise included in a Preconstruction Agreement, or other Early Work Package, or amendment thereto
- Construction services required
- The RFC Plans and Special Provisions developed by the Design-Build Team and accepted by the Department, incorporated by reference
- NEPA commitments, as applicable, whether directly included or incorporated by reference
- Third party involvement or restrictions
- Information or services to be provided by the Department
- DBE listing forms
- Construction Agreed Price, including payment terms that vary from those contained in this Master Agreement or included those documents incorporated by reference in this Master Agreement
- Intermediate Contract Times and Liquidated Damages
- Payment and Performance Bonds
- Gift Ban and Debarment Certification forms
- Itemized Proposal Form and Signature Sheets

Each Early Works Package is considered a supplemental agreement to this Master Agreement. Each Early Work Package will thereby, by reference, be incorporated into the Contract Documents and included on a listing form similar to that included in Appendix D as maintained by the NCDOT Alternative Delivery Unit.

7.4 Early Work Package Supplemental Agreements

Supplemental agreements to an Early Works Package may be made in accordance with the Standard Specifications, as may be amended in this Master Agreement. Each such supplemental agreement to the Early Work Package(s) will thereby, by reference, be incorporated into the Contract Documents and included on a listing form similar to that included in Appendix D as maintained by the NCDOT Alternative Delivery Unit.

7.5 Early Work Package Pricing

Pricing of Early Work Packages will generally follow the requirements of Section 6 of this Master Agreement. The Design-Build Team shall collaborate with the Department to optimize scope such that negotiations can occur rapidly, affording early mobilization and construction.

7.6 Construction Agreed Price for an Early Work Package

The Construction Agreed Price for an Early Work Package is the summation of all contract line item amounts, which include all direct costs, indirect costs, and fees, as negotiated between the Design-Build Team and the Department, for all Work scoped in the Early Work Package and to be performed in accordance with this Master Agreement and other Contract Documents, excluding contractual price adjustments for fuel and materials and/or liquidated damages assessed.

The Contractor assumes all risk with the performance of the bid items, including management of its subcontractors, suppliers, and any associated cost impacts over and above the Construction Agreed Price unless otherwise stipulated in the applicable Early Work Package. Unless otherwise stipulated in the applicable Early Work Package, the Construction Agreed price for an Early Work Package will not be adjusted except for the following reasons:

- Executed supplemental agreements or force accounts that provide additional compensation or additional time to the contractor. The adjustment to the Construction Agreed Price will be reflective of the value of the Supplemental Agreement and will not be based on final quantities associated with the agreement. For force account work, the Construction Agreed Price (or GMP) will be adjusted by the final value of the force account work.
- Price adjustments made in accordance with Section 10 of this Master Agreement.
- Assessment of Liquidated Damages in accordance with Article 108-11 of the Standard Specifications.
- Approved claims providing additional compensation or additional time.
- Non-lump sum line item overruns shall not constitute an increase in the Construction Agreed Price (or GMP) unless otherwise stipulated in the Early Work Package or mutually agreed between the Parties.

7.7 Concurrence on Construction Agreed Price for an Early Work Package

The Department will compare the proposed Construction Agreed Price (or GMP) with the Engineer's Estimate and Independent Cost Estimator's estimate to assure the reasonableness of the proposed Construction Agreed Price (or GMP). Upon Department and FHWA concurrence on the proposed, or negotiated, Construction Agreed Price (or GMP), the Early Work Package will be executed.

SECTION 8 – SITE CONDITIONS

8.1 Site Conditions

The Department does not warrant or guarantee the sufficiency or accuracy of any investigations made, nor the interpretations made or opinions of the Department as to the type of materials and conditions to be encountered at the project site. The Design-Build Team shall make such reasonable independent subsurface investigations, as they deem necessary to satisfy their self as to conditions to be encountered on this project. The Design-Build Team shall have no claim for additional compensation or for an extension of contract time for any reason resulting from the actual conditions encountered at the site differing from those indicated in any of the information or documents furnished by the Department except as may be allowed under the provisions of the Standard Specifications.

8.2 Archaeological and Historic Resources

If the Design-Build Team discovers any undocumented historic or archaeological resources while conducting the authorized Work, they shall immediately suspend activities in that area and notify, in writing, the Alternative Delivery Unit, the NCDOT Historic Architecture Team Leader, the NCDOT Archaeology Team Leader and the NCDOT Project Development Engineer listed below.

Upon receipt of notification, the Department will perform an initial assessment and initiate any required State / Federal coordination. Should the initial resource assessment and agency coordination completed by NCDOT determine that additional NRHP evaluation and/or Section 106 mitigation is necessary, the Design Build Team shall engage the services of a NCDOT prequalified historic architecture and / or archaeology consultant to conduct further historic architecture and / or archaeology evaluation and / or mitigation. The inadvertent or accidental discovery of human remains shall be handled in accordance with North Carolina General Statutes 65 and 70.

All questions regarding these discoveries shall be addressed to Mary Pope Furr, NCDOT Historic Architecture Team Leader at (919) 707-6068 or Matthew Wilkerson, NCDOT Archaeology Team Leader at (919) 707-6089.

8.3 Geoenvironmental

8.3.1 Definition

For the purpose of this Section 8.3, contamination / contaminants are defined as any substance that when discharged in any quantity may present an imminent and substantial danger to the public health or welfare. Petroleum is defined as any petroleum-derived product of any kind and in any form, including but not limited to, crude oil, diesel fuel, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether occurring singly or in combination with other substances.

8.3.2 Description of Work

The Design-Build Team shall coordinate with the Department's Geoenvironmental staff early in the Preconstruction Phase such that the Department may conduct site visits and develop a Geoenvironmental Pre-scoping Report for the Project and identify any known or potential areas of geoenvironmental concern.

After submittal of the Right of Way Roadway Plans developed by the Design-Build Team, the Design-Build Team shall hold a right of way consultation with the Department's Geoenvironmental staff, Alternative Delivery Unit, and key Design-Build Team members.

Sites of concern within the proposed right of way that are noted in the Geotechnical Pre-Scoping Report, plus any other sites identified during the right of way consultation with the Design-Build Team, will be investigated by the Department. The Department shall require 90 days from the date of the aforementioned consultation to investigate and provide Right of Way Recommendations. The Right of Way Recommendations shall be completed prior to the Design-Build Team making offers to purchase the right of way on these sites of concern.

The Design-Build Team shall notify the Alternative Delivery Unit, in writing, of any underground storage tanks (USTs) containing petroleum, chemicals, or heating oil tanks discovered during property appraisals. The Department will require 90 days from the date of the written notification to investigate and provide Right of Way Recommendations. The Right of Way Recommendations shall be completed prior to the Design-Build Team making offers to purchase the right of way on sites containing USTs.

The Design-Build Team shall adhere to all Right of Way Unit procedures regarding the acquisition of contaminated property and all Right of Way Recommendations provided by the Department.

After the parcels with identified contamination and / or underground storage tanks (USTs) are acquired and cleared of all above ground structures, the Department will 1) remove from the right of way those USTs identified in the Right of Way Recommendations and discovered during the property appraisals, and 2) remove all associated contaminated soil anticipated to require excavation to complete the project. If any contaminated soil anticipated to require excavation to complete the project is located in an area only accessible after construction activities have occurred, the Department will remove the contaminated soil following completion of the necessary construction activities. The Department will remove the aforementioned USTs and contaminated soil within 60 days of written notification that the Design-Build Team has 1) removed all the above-ground structures or 2) completed the necessary construction activities. All contaminated soil not required for removal to complete the project shall be left in place and undisturbed.

If groundwater is encountered and dewatering is required in areas of known contamination, the Design-Build Team shall containerize the groundwater in vessels provided by the Department. The Department will be responsible for the sampling and disposal of the water.

8.3.3 Unknown Contaminated Sites

The Design-Build Team shall immediately notify the Department if the Design-Build Team's operations encounter or expose any abnormal condition that may indicate the presence of a hazardous, contaminated, and / or toxic material not previously identified. If the Engineer elects to have the Design-Build Team remove and dispose of hazardous, toxic or otherwise contaminated material, the removal and disposal of this material shall be performed as extra work in accordance with Article 107-25 of the Standard Specifications.

SECTION 9 – PERSONNEL

9.1 Design-Build Team Personnel

9.1.1 Prequalification Requirements

All firms shall be prequalified by the Department for the Work they are identified to perform. Professional service firms must be prequalified by the particular office doing the work.

All Joint Ventures, LLCs, or any legal structure that are different than the existing prequalification status must be prequalified prior to execution of this Master Agreement. Subcontractors need only be prequalified prior to performing the Work. Design firms should be prequalified prior to the execution of the Preconstruction Phase Agreement. If not prequalified at the time of execution of the Preconstruction Phase Agreement, the prime contractor shall be solely responsible for either (1) ensuring that the design firm is prequalified prior to its first design submittal or (2) replacing that firm with a prequalified firm.

9.1.2 Design-Build Team Organization

The Design-Build Team shall provide a comprehensive Organizational Chart that identifies the design, quality and construction team members, and the relationships with subconsultants / subcontractors. This organization chart will be included in this Master Agreement as Appendix E.

Accompanying the organization chart submittal shall be a description of any additions, deletions or changes to the organizational chart included in the Design-Build Team's Statement of Qualifications. All such changes are subject to Department review and approval. In the event that no changes have occurred to the organizational chart included in the Design-Build Team's Statement of Qualifications, the Design-Build Team shall so affirm.

An organization chart with the granularity supplied in the Statement of Qualifications will be generally sufficient for this submittal but at a minimum shall identify the following key personnel:

- (a) **Design-Build Project Manager** - Identify the person who (1) will be responsible for ensuring that adequate personnel and other resources are made available for the Project; (2) will handle contractual matters; and (3) will be ultimately responsible for the quality and timeliness of the Design-Build Team.
- (b) **Design Project Manager** - State who will actively manage the design.
- (c) **Construction Project Manager** - State who will actively manage the construction.
- (d) **Lead Estimator** – Identify the individual or individuals that are anticipated to serve as lead estimator throughout the establishment and concurrence of the GMP and lump sum construction cost.
- (e) **Other Key Staff** - Identify other members of the Design-Build Team that are deemed to be key staff to this Project, but at a minimum, identify the construction superintendent(s), lead Roadway Design Engineer, Lead Hydraulics Engineer, Lead Structures Engineer and

Lead Geotechnical Engineer. Include subconsultants or subcontractors and other Key Staff that will provide special expertise or will perform key tasks.

The Design-Build Team shall not change team members, subconsultants or subcontractors identified in the Statement of Qualifications (SOQ) or this Master Agreement without written consent of the Engineer or the State Contract Officer. In addition, subconsultants and subcontractors not identified in the SOQ or this Master Agreement shall not perform any Work without written consent by the Engineer. Individual offices of the Design-Build Team not identified in the SOQ submitted shall not perform any Work without written consent by the Engineer, which consent shall not be unreasonably withheld. Failure to comply with these requirements may be justification for removing the Design-Build Team members from further consideration for this project and disqualification from submitting on future Design-Build Projects.

9.2 Ethics

Policy

Employees employed by the Design-Build Team or employees employed by any subconsultant for the Design-Build Team to provide services for this project shall comply with the Department's Ethics Policy. Failure to comply with the Ethics Policy will result in the employee's removal from the project and may result in removal of the Company from the Department's appropriate prequalified list.

9.3 Personnel Restrictions

9.3.1 General

The Department will have the right to approve or reject any personnel, assigned to a project by the Design-Build Team.

The Proposer is directed to CFR 23 Part 636.116 for additional organizational conflicts of interest requirements.

9.3.2 Subconsultant Restrictions

Proposer's attention is directed to the use of consulting engineer requirements in the Design-Build Policy and Procedures dated October 6, 2011 that shall apply to all firms except those that performed location and survey work tasks or geotechnical investigations. If a member of the proposer's team wishes to be granted an exception to this Policy, then that team member should submit a letter to the Department requesting an exception. The letter should be addressed and submitted to Mr. Ronald E. Davenport, Jr., PE, at the address below:

Mr. Ronald E. Davenport, Jr., PE
NCDOT - Contract Standards and Development Unit
1020 Birch Ridge Drive
Raleigh, NC 27610

9.3.3 Restrictions on Individuals

In the event of engagement of a former employee of the Department, the Design-Build Team and their subcontractors shall restrict such person or persons from working on any Design-Build procurement/project in which the person or persons were “formerly involved” while employed by the State. The restriction period shall be for the duration of the procurement/project with which the person was involved. Former Involvement shall be defined as active participation in any of the following activities:

- Drafting the contract or contract Scopes of Work
- Design-Build Team selection
- Negotiation of the contract cost (including calculating manhours or fees)
- Contract administration

An exception to the former NCDOT employee restrictions may be granted when recommended by the Secretary and approved by the Board of Transportation. If a member of the proposer’s team wishes to be granted an exception, then that team member should submit a letter to the Department requesting an exception. The letter should be addressed and submitted to Mr. Ronald E. Davenport, Jr., PE, at the address noted above.

The Design-Build Team and their subconsultants/subcontractors shall restrict all personnel embedded within the Department, including but not limited to Design Units and Divisions, from working on the Design-Build Project without written approval from the State Contract Officer.

SECTION 10 – POTENTIAL PRICE ADJUSTMENTS

In addition to price adjustments for Extra Work and as otherwise specified in the Standard Specifications, the following price adjustment provisions will be applicable to the Construction Contract, Early Work Packages, and certain amendments thereto if so indicated in the relevant Contract Document.

10.1 Fuel

10.1.1 Option for Fuel Price Adjustment

The Design-Build Team will have the option of including a fuel price adjustment in each Construction Contract, Early Work Package, or amendments thereto. However, the Design Build-Team will not be allowed to add or delete a fuel price adjustment after execution of the relevant Contract Document.

10.1.2 Submittal of Quantities

The Design-Build Team shall prepare an Estimate of Quantities that will be incorporated into the completed Work outlined in the relevant Contract Document and upon which the Construction Agreed Price for that price was based. The quantity breakdown shall include all items of Work that appear in the *Fuel Usage Factor Chart and Estimate of Quantities* sheet. Only those items of Work which are specifically noted in the *Fuel Usage Factor Chart and Estimate of Quantities* sheet will be subject to fuel price adjustments. The quantity estimate submitted shall be the final total quantity limit for which fuel price adjustments will be made for each item.

The form of the *Fuel Usage Factor Chart and Estimate of Quantities* is included as Appendix F of this Master Agreement. The submittal shall be signed and dated by an officer of the Design-Build Team and be included in the applicable Construction Contract, Early Work Package, or amendment thereto.

10.1.3 Base Index Price

The Design-Build Team's Estimate of Quantities will be used on the various partial payment estimates to determine fuel price adjustments. The Design-Build Team shall submit a payment request for quantities of Work completed based on the Work completed for that estimate period. The quantities requested for partial payment shall be reflective of the Work actually accomplished for the specified period. The Design-Build Team shall certify that the quantities are reasonable for the specified period. The base index price for DIESEL #2 FUEL to be used in the calculation is **\$2.6947** per gallon in the applicable Contract Document.

10.1.4 Fuel Usage Factor for Asphalt Line Items

If the Design-Build Team elects to pursue reimbursement for Fuel Price Adjustments, the Design-Build Team shall select either the 0.90 **or** 2.90 Fuel Usage Factor for each individual asphalt line

item by marking the appropriate Factor on the *Fuel Usage Factor Chart*. If the Design-Build Team does not mark either Fuel Usage Factor or marks both Fuel Usage Factors for an asphalt line item, the 2.90 Fuel Usage Factor shall be used for that asphalt line item.

10.2 Steel

10.2.1 Description and Purpose

When the price of raw steel mill products utilized on the Project have fluctuated, steel price adjustments will be made to the payments due the Design-Build Team for selected eligible items, as defined herein, that are permanently incorporated into the Work. The Department will adjust monthly progress payments up or down, as appropriate, for cost changes in steel according to this provision.

10.2.2 Eligible Items

The list of standard items the Department has determine are eligible for steel price adjustment can be found on the Departments website at the following address:

<https://connect.ncdot.gov/letting/Pages/Central-Letting-Resources.aspx>

Nuts, bolts, anchor bolts, rebar chairs, connecting bands and other miscellaneous hardware associated with these items shall not be included in the price adjustment.

Price adjustments shall only be made for fluctuations in the material cost of the steel used in the above products as specified in the Product Relationship Table below. The producing mill shall be defined as the source of steel product before any fabrication has occurred (e.g., coil, plate, rebar, hot rolled shapes, etc.). No adjustment will be made for changes in the cost of fabrication, coating, shipping, storage, etc.

A steel price adjustment shall not be made for any products manufactured from steel having an adjustment date, as defined by the Product Relationship Table below, more than 30 days prior to the date of execution of the relevant Early Work Package or Construction Contract.

10.2.3 Submittal Requirements

The Design-Build Team shall provide Form SPA-1DB listing the steel material, (with corresponding Trns*port Item Number, Item Description, and Category) for the steel products they wish to have a price adjustment calculated. Only the Work items corresponding to the list of eligible item numbers for steel price adjustment may be entered on Form SPA-1DB. The Design-Build Team may choose to have steel price adjustment applied to any, all, or none of the eligible items. However, the Design-Build Team's selection of work items for steel price adjustment or non-selection (non-participation) shall not change once the Department has received Form SPA-1DB for that Construction Contract or Early Work Package.

Work items the Design-Build Team chooses for steel price adjustment must be designated by writing the word “Yes” in the column titled “Option” by each Trns*port Pay Item chosen for price adjustment. The Design-Build Team’s designations on Form SPA-1DB shall be written in ink or typed. The completed SPA-1DB shall be signed and dated by an officer of the Design-Build Team to be considered complete. Items not properly designated, designated with “No”, or left blank on the Design-Build Team’s Form SPA-1DB shall automatically be removed from consideration for a price adjustment.

The Design-Build Team shall submit the completed Form SPA-1DB to the Engineer prior to the execution of the relevant Construction Contract or Early Work Package.

Form SPA-1DB can be found on the Department’s website below:

<https://connect.ncdot.gov/letting/LetCentral/Form%20SPA-1%20DB%202022-7-26.xlsm>

10.2.4 Establishing the Base Price

The Department will use a blend of monthly average prices as reported from the Fastmarkets platform to calculate the monthly adjustment indices (BI and MI). This data is typically available on the first day of the month for the preceding month. The Department will calculate the indices for the different categories found on the Product Relationship Table below. For work item numbers that include multiple types of steel products, the category listed for that Trns*port item number shall be used for adjusting each steel component.

The bidding index for Category 1 Steel items shall be \$ **46.13** per hundredweight.
The bidding index for Category 2 Steel items shall be \$ **51.08** per hundredweight.
The bidding index for Category 3 Steel items shall be \$ **67.61** per hundredweight.
The bidding index for Category 4 Steel items shall be \$ **45.57** per hundredweight.
The bidding index for Category 5 Steel items shall be \$ **54.81** per hundredweight.
The bidding index for Category 6 Steel items shall be \$ **57.66** per hundredweight.
The bidding index for Category 7 Steel items shall be \$ **47.89** per hundredweight.

The bidding indices represent a selling price of steel based on Fastmarkets data for the month of **November 2025**.

MI = Monthly Index - in Dollars (\$) per hundredweight (CWT). Use the adjustment indices from the month the steel was shipped from the producing mill, received on the project, or member cast as defined in the Product Relationship Table.

BI = Bidding Index - in Dollars (\$) per hundredweight (CWT). Use the adjustment indices as indicated above.

<i>Product Relationship Table</i>			
<i>Steel Product (Title)</i>	<i>BI, MI*</i>	<i>Adjustment Date for MI</i>	<i>Category</i>
Reinforcing Steel, Bridge Deck and SIP Forms	Based on one or more Fastmarkets indices	Delivery Date from Producing Mill	1
Structural Steel and Encasement Pipe	Based on one or more Fastmarkets indices	Delivery Date from Producing Mill	2
Steel H-Piles and Soldier Pile Walls	Based on one or more Fastmarkets indices	Delivery Date from Producing Mill	3
Guardrail Items and Pipe Piles	Based on one or more Fastmarkets indices	Material Received Date**	4
Fence Items	Based on one or more Fastmarkets indices	Material Received Date**	5
Overhead Sign Assembly, Signal Poles and High Mount Standards	Based on one or more Fastmarkets indices	Material Received Date**	6
Prestressed Concrete Members	Based on one or more Fastmarkets indices	Cast Date of Member	7
* BI and MI are in converted units of Dollars per Hundredweight (\$ / CWT)			
** Material Received Date shall be defined as the date the materials are received on the project site. If a material prepayment is made for a Category 4 - 6 item, the Adjustment Date to be used shall be the date of the prepayment request instead of the Materials Received Date.			

Submit documentation to the Engineer for all items listed in the contract for which the Design-Build Team is requesting a steel price adjustment.

10.2.5 Submittal Requirements

Immediately upon arrival at the fabricator, the items in categories 1, 2 and 3, shall be specifically stored, labeled, or tagged, recognizable by color marking, and identifiable by Project for inspection and audit verification.

Furnish the following documentation for all steel products to be incorporated into the Work and documented on Form SPA-2. Submit all documentation to the Engineer prior to incorporation of the steel into the completed Work. The Department will withhold progress payments for the affected contract line item(s) if the documentation is not provided and, at the discretion of the Engineer, the Work is allowed to proceed. Progress payments will be made upon receipt of the delinquent documentation.

Form SPA-2 can be found on the following website:

<https://connect.ncdot.gov/projects/construction/Construction%20Forms/Form%20SPA-2.xlsx>

Step 1 (Form SPA -2)

Utilizing Form SPA-2, submit separate documentation packages for each work item from Form SPA-1DB for which the Design-Build Team opted for a steel price adjustment. For work items with multiple steel components, each component shall be listed separately. Label each SPA-2 documentation package with a unique number as described below:

- a. Documentation package number: (Insert the work item) - (Insert sequential package number beginning with “1”)

Example: 412 - 1
412 - 2
424 - 1
424 - 2
424 - 3, etc.

- b. The steel product quantity in pounds

- i. The following sources shall be used, in declining order of precedence, to determine the weight of steel / iron, based on the Engineer’s decision:

1. Approved Shop Drawings
 2. Verified Shipping Documents
 3. Released for Construction (RFC) Plans
 4. Standard Drawing Sheets
 5. Industry Standards (e.g., AISC Manual of Steel Construction
AWWA Standards, etc.)
 6. Manufacture’s data

- ii. Any item requiring approved shop drawings shall have the weights of steel calculated and shown on the shop drawings or submitted and certified separately by the fabricator.

- c. The date the steel product, subject to price adjustment, was shipped from the producing mill (Categories 1 - 3), received on the project (Categories 4 - 6), or casting date (Category 7).

Step 2 (Monthly Calculator Spreadsheet)

For each month, upon the incorporation of the steel product into the Work, provide the Engineer the following:

- 1) Completed NCDOT Steel Price Adjustment Calculator Spreadsheet, summarizing all the steel submittal packages (Form SPA-2) actually incorporated into the completed Work in the given month.
 - a. Contract Number
 - b. Bidding Index Reference Month
 - c. Contract Completion Date or Revised Contract Completion Date
 - d. County, Route and Project TIP information
 - e. Work Item Number from Table of Quantities
 - f. Line-Item Description (corresponding Trns*port pay item)
 - g. Submittal Number from Form SPA-2
 - h. Adjustment Date
 - i. Pounds of Steel
- 2) An affidavit signed by the Design-Build Team stating the documentation provided in the NCDOT Steel Price Adjustment Calculator Spreadsheet is true and accurate.

10.2.6 Price Adjustment Conditions

Download the Monthly Steel Adjustment Spreadsheet with the most current reference data from the Department's website each month. The Steel Price Adjustment Calculator Spreadsheet can be found on the following website:

<https://connect.ncdot.gov/projects/construction/Pages/Construction-Resources.aspx>

If the monthly Fastmarkets data is not available, the data for the most recent immediately preceding month shall be used as the basis for price adjustment.

10.2.7 Price Adjustment Calculations

The price adjustment shall be determined by comparing the percentage of change in index value listed herein, (BI) to the monthly index value (MI) (Reference the examples below). Weights and date of shipment shall be documented as required herein. The final price adjustment dollar value will be determined by multiplying this percentage increase or decrease in the index by the represented quantity of steel incorporated into the Work, and the established bidding index (BI) subject to the limitations herein.

Price increase / decrease shall be computed as follows:

$$\text{SPA} = ((\text{MI} / \text{BI}) - 1) * \text{BI} * (\text{Q} / 100)$$

Where:

SPA = Steel price adjustment in dollars

- MI = Monthly Shipping Index - in Dollars (\$) per hundredweight (CWT). Use the adjustment indices from the month the steel was shipped from the producing mill, received on the project, or member cast as defined in the Product Relationship Table.
- BI = Bidding Index - in Dollars (\$) per hundredweight (CWT). Use the adjustment indices as listed herein.
- Q = Quantity of steel, product, pounds actually incorporated into the Work as documented by the Design-Build Team and verified by the Engineer.

Calculations for price adjustment shall be shown separate from the monthly progress estimate and shall not be included in the total cost of Work for determination of progress or for extension of contract time in accordance with Subarticle 108-10(B)(1) in Division One found elsewhere in this RFP.

Adjustments shall only be paid or charged to the Design-Build Team. Any Design-Build Team receiving a price adjustment under this provision shall distribute the proper proportional part of such adjustments to the subcontractor who performed the applicable Work.

Delays to the Work caused by steel shortages may be justification for a contract time extension, but will not constitute grounds for claims for standby equipment, extended office overhead, or other costs associated with such delays.

Price adjustments of eligible work items shall be adjusted up or down to a maximum of 50% from the Bid Index (BI) when compared to the Monthly Index (MI) of the steel product adjustment date.

If the decrease in the steel material exceeds 50% of the BI, the Design-Build Team may submit to the Department additional market index information specific to the work item in question to dispute the decrease. The Department will review this information and determine if the decrease is warranted.

When the steel product adjustment date, as defined in the Product Relationship Table, is after the approved contract completion date, the steel price adjustments shall be based on the lesser value of either the MI for the month of the approved contract completion date or the MI for the actual adjustment date.

If the price adjustment is based on estimated material quantities for that time, and a revision to the total material quantity is made in a subsequent or final estimate, an appropriate adjustment will shall be made to the price adjustment previously calculated. The adjustment shall be based on the same indices used to calculate the price adjustment which is being revised. If the adjustment date of the revised material quantity cannot be determined, the adjustment for the quantity in question, shall be based on the indices utilized to calculate the steel price adjustment for the last initial documentation package submission, for the steel product subject to price adjustment, that was incorporated into the particular work item, for which quantities are being finalized.

Example: Structural steel for a particular bridge was provided for in three different shipments with each having a different mill shipping date. The quantity of structural steel actually used for the bridge was calculated and a steel price adjustment was made in a progress payment. At the conclusion of the Work an error was found in the plans of the final quantity of structural steel used for the bridge. The quantity to be adjusted cannot be directly related to any one of the three mill shipping dates. The steel price adjustment for the quantity in question shall be calculated using the indices that were utilized to calculate the steel price adjustment for the quantity of structural steel represented by the last initial structural steel documentation package submission. The package used shall be the one with the greatest sequential number.

10.2.8 Extra Work / Force Account

When steel products, as specified herein, are added to the contract as extra work, in accordance with the provisions of Article 104-7 or 104-8, the Engineer will determine and specify in the supplemental agreement, the application of steel price adjustments on a case-by-case basis. A steel price adjustment shall not be made for any products manufactured from steel having an adjustment date prior to the supplemental agreement execution date. Price adjustments shall be made as provided herein, except the Bidding Index shall be based on the month in which the supplemental agreement pricing was executed.

For work performed on force account basis, reimbursement of actual material costs, along with the specified overhead and profit markup, shall be considered to include full compensation for the current cost of steel and steel price adjustments shall not be made.

Example: Form SPA-2**Steel Price Adjustment Submission Form**Contract Number C203394 Bid Reference Month January 2019Submittal Date 8/31/2019Work Item from the Table of Quantities 237Work Item Description APPROX....LBS Structural SteelSequential Submittal
Number 2

Supplier	Description of material	Location information	Quantity in lbs.	Adjustment Date
XYZ mill	Structural Steel	Structure 3, Spans A - C	1,200,000	May 4, 2020
ABC distributing	Various channel and angle shapes	Structure 3 Spans A - C	35,000	July 14, 2020
		Total Pounds of Steel	1,235,000	

Note: Attach the following supporting documentation to this form:

- Bill of Lading to support the shipping date(s)
- Supporting information for weight documentation (e.g., Pay item reference, shop drawings, shipping documents, Standards Sheets, industry standards, or manufacturer's data)

By providing this data under my signature, I attest to the accuracy of and validity of the data on this form and certify that no deliberate misrepresentation in any manner has occurred.

Printed Name

Signature

Example: Form SPA-2**Steel Price Adjustment Submission Form**Contract Number C203394 Bid Reference Month January 2019Submittal Date August 31, 2019Work Item from the Table of Quantities 158Work Item Description SUPPORT, OVRHD SIGN STR -DFEB- STA 36+00 -L-Sequential Submittal
Number 2

Supplier	Description of material	Location information	Quantity in lbs.	Adjustment Date
XYZ mill	Tubular Steel (Vertical legs)	-DFEB- STA 36+00 -L-	12,000	December 11, 2021
PDQ Mill	4" Tubular steel (Horizontal legs)	-DFEB- STA 36+00 -L-	5,900	December 11, 2021
ABC distributing	Various channel and angle shapes (see quote)	-DFEB- STA 36+00 -L-	1,300	December 11, 2021
	Catwalk assembly	-DFEB- STA 36+00 -L-	2,000	December 11, 2021
Nucor	Flat plate	-DFEB- STA 36+00 -L-	650	December 11, 2021
		Total Pounds of Steel	21,850	

Note: Attach the following supporting documentation to this form.

- Bill of Lading to support the shipping date(s)
- Supporting information for weight documentation (e.g., Pay item reference, shop drawings, shipping documents, Standards Sheets, industry standards, or manufacturer's data)

By providing this data under my signature, I attest to the accuracy of and validity of the data on this form and certify that no deliberate misrepresentation in any manner has occurred.

Printed Name

Signature

Example: Price Adjustment Calculation - Increase

Price Proposal opened on September 17, 2019

Work Item 635 “Structural Steel” has a Released for Construction plan quantity of 2,717,000 pounds

Bidding Index for Structural Steel (Category 2) in the Final Request for Proposals, including all Addenda, was \$36.12 / CWT = BI

450,000 pounds of Structural Steel for Structure 2 at Station 44+08.60 -L- were shipped to fabricator from the producing mill in same month, May 2021.

Monthly Index for Structural Steel (Category 2) for May 2021 was \$64.89 / CWT = MI

The Steel Price Adjustment formula shall be as follows:

$$\text{SPA} = ((\text{MI} / \text{BI}) - 1) * \text{BI} * (\text{Q} / 100)$$

Where: SPA = Steel price adjustment in dollars

BI = Bidding Index - in dollars (\$) per hundredweight (CWT). Use the adjustment indices as listed in the relevant Construction Phase Contract or Early Work Package.

MI = Mill Shipping Index - in dollars (\$) per hundredweight (CWT). Use the adjustment indices from the month the steel was shipped from the producing mill, received on the project, or member cast as defined in the Product Relationship Table.

Q = Quantity of steel product, in pounds (lbs.) actually incorporated into the work as documented by the Design Build Team and verified by the Engineer.

$$\text{BI} = \$36.12 / \text{CWT}$$

$$\text{MI} = \$64.89 / \text{CWT}$$

$$\% \text{ change} = ((\text{MI} / \text{BI}) - 1) = (\$64.89 / \$36.12 - 1) = (1.79651 - 1) = 0.79651162791$$

$$\text{Q} = 450,000 \text{ pounds}$$

$$\text{SPA} = 0.79651162791 * \$36.12 * (450,000 / 100)$$

$$\text{SPA} = 0.79651162791 * \$36.12 * 4,500$$

SPA = \$129,465 pay adjustment to the Design-Build Team for Structural Steel (Structure 2 at Station 44+08.60 -L-)

Example: Price Adjustment Calculation - Decrease

Price Proposal opened on December 18, 2018

Work Item 635 Structural Steel has a Released for Construction plan quantity of 2,717,000 pounds

Bidding Index for Structural Steel (Category 2) in the Final Request for Proposals, including all Addenda, was \$46.72 / CWT = BI

600,000 pounds of Structural Steel for Structure 1 at Station 22+57.68 -Y- were shipped to fabricator from the producing mill in same month, August 2020.

Monthly Index for Structural Steel (Category 2) for August 2020 was \$27.03 / CWT = MI

The Steel Price Adjustment formula shall be as follows:

$$\text{SPA} = ((\text{MI} / \text{BI}) - 1) * \text{BI} * (\text{Q} / 100)$$

Where: SPA = Steel price adjustment in dollars

BI = Bidding Index - in dollars (\$) per hundredweight (CWT). Use the adjustment indices as listed in the relevant Construction Phase Contract or Early Work Package.

MI = Mill Shipping Index - in dollars (\$) per hundredweight (CWT). Use the adjustment indices from the month the steel was shipped from the producing mill, received on the project, or member cast as defined in the Product Relationship Table.

Q = Quantity of steel product, in pounds (lbs.) actually incorporated into the Work as documented by the Design Build Team and verified by the Engineer.

$$\text{BI} = \$46.72 / \text{CWT}$$

$$\text{MI} = \$27.03 / \text{CWT}$$

$$\% \text{ change} = ((\text{MI} / \text{BI}) - 1) = (\$27.03 / \$46.72 - 1) = (0.57855 - 1) = -0.421446917808$$

$$\text{Q} = 600,000 \text{ pounds}$$

$$\text{SPA} = -0.421446917808 * \$46.72 * (600,000 / 100)$$

$$\text{SPA} = -0.421446917808 * \$46.72 * 6,000$$

SPA = \$118,140.00 pay adjustment (credit) to the Department for Structural Steel (Structure 1 at Station 22+57.68 -Y-)

Example - Price Adjustment Calculation - Increase

Price Proposal opened on July 16, 2020

Work Item 614 Reinforced Concrete Deck Slab has a Released for Construction plan quantity of 24,1974 pounds.

Bidding Index Reference Month was May 2020. Bidding Index for Reinforced Concrete Deck Slab (Category 1) in the proposal was \$29.21 / CWT = BI

51,621 pounds of reinforcing steel and 52,311 pounds of epoxy coated reinforcing steel for Structure 2 at Station 107+45.55 -L- was shipped to fabricator from the producing mill in same month, May 2021.

Monthly Index for Reinforced Concrete Deck Slab (Category 1) for May 2021 was \$43.13 / CWT = MI

The Steel Price Adjustment formula shall be as follows:

$$\text{SPA} = ((\text{MI} / \text{BI}) - 1) * \text{BI} * (\text{Q} / 100)$$

BI = Bidding Index - in dollars (\$) per hundredweight (CWT). Use the adjustment indices as listed in the Final Request for Proposals, including all Addenda.

MI = Mill Shipping Index - in dollars (\$) per hundredweight (CWT). Use the adjustment indices from the month the steel was shipped from the producing mill, received on the project, or member cast as defined in the Product Relationship Table.

Q = Quantity of steel product, in pounds (lbs.) actually incorporated into the Work as documented by the Design Build Team and verified by the Engineer.

$$\text{BI} = \$29.21 / \text{CWT}$$

$$\text{MI} = \$43.13 / \text{CWT}$$

$$\% \text{ change} = ((\text{MI} / \text{BI}) - 1) = (\$43.13 / \$29.21 - 1) = (1.47655 - 1) = 0.47654912701$$

$$\text{Q} = 103,932 \text{ pounds}$$

$$\text{SPA} = 0.47654912701 * \$29.21 * (103,932 / 100)$$

$$\text{SPA} = 0.47654912701 * \$29.21 * 1,039.32$$

SPA = \$14,467.33 pay adjustment to the Design-Build Team for Reinforced Concrete Deck Slab (Category 1) at Station 107+45.55 -L-

10.3 Asphalt Binder

Price adjustments for asphalt binder for plant mix will be made in accordance with Section 620 of the *Standard Specifications*.

The base price index for asphalt binder for plant mix is **\$555.00** per ton.

This base price index represents an average of F.O.B. selling prices of asphalt binder at supplier's terminals on November 1, 2025.

10.4 Asphalt Plant Mix

The Standard Specifications are revised as follows:

Page 6-15, Article 609-11 and Page 6-30, Article 610-14

Add the following paragraph before the first paragraph:

The “Asphalt Price” used to calculate any price adjustments set forth in this section shall be \$40.00 per theoretical ton. This price shall apply for all mix types.

SECTION 11 – MISCELLANEOUS PROVISIONS

11.1 Contractor's License Requirements

The Design-Build Team shall comply will all applicable laws regulating the practice of General Contracting as contained in Chapter 87 of the North Carolina General Statutes. The Design-Build Team shall also comply with all other applicable laws regulating the practices of electrical, plumbing, heating and air conditioning and refrigeration contracting as contained in Chapter 87 of the North Carolian General Statutes.

If the Design-Build Team does not hold the proper license to perform any plumbing, heating, air conditioning, or electrical work in this contract, he shall sublet such work to a contractor properly licensed in accordance with Article 2 of Chapter 87 of the General Statutes (licensing of heating, plumbing, and air conditioning contractors) and Article 4 of Chapter 87 of the General Statutes (licensing of electrical contractors).

11.2 Use of Unmanned Aircraft System

The Design-Build Team shall adhere to all Federal, State and Local regulations and guidelines for the use of Unmanned Aircraft Systems (UAS). This includes, but is not limited to, US 14 CFR Part 107, NC GS 15A-300, all FAA rules, regulations and policies and all NCDOT UAS Policies. The required operator certifications include possessing a current Federal Aviation Administration (FAA) Remote Pilot Certificate, as well as operating a UAS registered with the FAA.

All UAS operations shall be approved by the Engineer prior to beginning the operations.

All Design-Build team members operating UAS shall have UAS specific general liability insurance to cover all operations under this contract.

The use of UAS shall be at the Design-Build Team's discretion. Except as allowed otherwise below, no measurement or payment will be made for the use of UAS. In the event that the Department directs the Design-Build Team to utilize UAS, all costs associated with using UAS will be paid for as extra work, in accordance with Subarticle 104-8(A) of the *Standard Specifications*.

11.3 Twelve Month Guarantee

The Design-Build Team shall guarantee materials and workmanship against latent and patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve months following the date of final acceptance of the Work and shall replace such defective materials and workmanship without cost to the Department. The Department will issue final acceptance on each Early Work Package, and other discrete portions of the project at the Department's discretion, provided such issuance of final acceptance is independent from future Work in that section of the project. The Design-Build Team will not be responsible for damage

due to normal wear and tear, for negligence on the part of the Department, and/or for use in excess of the design.

Where items of equipment or material carry a manufacturer's guarantee for any period in excess of twelve months, then the manufacturer's guarantee shall apply for that particular piece of equipment or material. The Department's first remedy shall be through the manufacturer, although the Design-Build Team shall be responsible for invoking the warranted repair work with the manufacturer. The Design-Build Team's responsibility shall be limited to the terms of the manufacturer's guarantee. NCDOT shall be afforded the same warranty as provided by the manufacturer.

This guarantee provision shall be invoked only for major components of Work in which the Design-Build Team would be wholly responsible for under the terms of the contract. Examples include pavement structures, bridge components, and sign structures. This provision will not be used as a mechanism to force the Design-Build Team to return to the project to make repairs or perform additional work that the Department would normally compensate the Design-Build Team for. In addition, routine maintenance activities (e.g., mowing grass, debris removal, ruts in earth shoulders, etc.) are not parts of this guarantee.

Appropriate provisions of the payment and/or performance bonds shall cover this guarantee for the project. In addition, failure on the part of the responsible entity(ies) of the Design-Build Team to perform guarantee work within the terms of this provision shall be just cause to remove the responsible entity(ies) from the Department's corresponding prequalified list. The Design-Build Team shall be removed for a minimum of six months and will be reinstated only after all Work has been corrected and the Design-Build Team requests reinstatement in writing.

To ensure uniform application statewide, the Division Engineer will forward details regarding the circumstances surrounding any proposed guarantee repairs to the Chief Engineer for review and approval prior to the Work being performed.

11.4 Erosion & Sediment Control / Stormwater Certification

11.4.1 General

Schedule and conduct construction activities in a manner that will minimize soil erosion and the resulting sedimentation and turbidity of surface waters. Comply with the requirements herein regardless of whether or not a National Pollution discharge Elimination System (NPDES) permit for the Work is required.

Establish a chain of responsibility for operations and subcontractors' operations to ensure that the *Erosion and Sediment Control/Stormwater Pollution Prevention Plan* is implemented and maintained over the life of the contract.

- (A) *Certified Supervisor* - Provide a certified Erosion and Sediment Control/Stormwater Supervisor to manage the Design-Build Team and subcontractor operations, ensure

compliance with Federal, State and Local ordinances and regulations, and manage the Quality Control Program.

- (B) *Certified Foreman* - Provide a certified, trained foreman for each construction operation that increases the potential for soil erosion or the possible sedimentation and turbidity of surface waters.
- (C) *Certified Installer* - Provide a certified installer to install or direct the installation for erosion or sediment/stormwater control practices.
- (D) *Certified Designer* - Provide a certified designer for the design of the erosion and sediment control/stormwater component of reclamation plans and, if applicable, for the design of the project erosion and sediment control/stormwater plan.

11.4.2 Roles and Responsibilities

- (A) *Certified Erosion and Sediment Control/Stormwater Supervisor* - The Certified Supervisor shall be Level II and responsible for ensuring the erosion and sediment control/stormwater plan is adequately implemented and maintained on the project and for conducting the quality control program. The Certified Supervisor shall be on the project within 24 hours notice from initial exposure of an erodible surface to the project's final acceptance. Perform the following duties:
 - (1) *Manage Operations* - Coordinate and schedule the work of subcontractors so that erosion and sediment control/stormwater measures are fully executed for each operation and in a timely manner over the duration of the contract.
 - (a) Oversee the work of subcontractors so that appropriate erosion and sediment control/stormwater preventive measures are conformed to at each stage of the Work.
 - (b) Prepare the required National Pollutant Discharge Elimination System (NPDES) Inspection Record and submit to the Engineer.
 - (c) Attend all weekly or monthly construction meetings to discuss the findings of the NPDES inspection and other related issues.
 - (d) Implement the erosion and sediment control/stormwater site plans requested.
 - (e) Provide any needed erosion and sediment control/stormwater practices for the Design-Build Team's temporary work not shown on the plans, such as, but not limited to work platforms, temporary construction, pumping operations, plant and storage yards, and cofferdams.
 - (f) Acquire applicable permits and comply with requirements for borrow pits, dewatering, and any temporary work conducted by the Design-Build Team in jurisdictional areas.
 - (g) Conduct all erosion and sediment control/stormwater work in a timely and workmanlike manner.

- (h) Fully perform and install erosion and sediment control/stormwater work prior to any suspension of the Work.
 - (i) Coordinate with Department, Federal, State and Local Regulatory agencies on resolution of erosion and sediment control/stormwater issues due to the Design-Build Team's operations.
 - (j) Ensure that proper cleanup occurs from vehicle tracking on paved surfaces or any location where sediment leaves the Right-of-Way.
 - (k) Have available a set of erosion and sediment control/stormwater plans that are initialed and include the installation date of Best Management Practices. These practices shall include temporary and permanent groundcover and be properly updated to reflect necessary plan and field changes for use and review by Department personnel as well as regulatory agencies.
- (2) Requirements set forth under the NPDES Permit - The Department's NPDES Stormwater permit (NCS000250) outlines certain objectives and management measures pertaining to construction activities. The permit references *NCG010000, General Permit to Discharge Stormwater* under the NPDES, and states that the Department shall incorporate the applicable requirements into its delegated Erosion and Sediment Control Program for construction activities disturbing one or more acres of land. The Department further incorporates these requirements on all contracted bridge and culvert work at jurisdictional waters, regardless of size. Some of the requirements are, but are not limited to:
- (a) Control project site waste to prevent contamination of surface or ground waters of the state, i.e. from equipment operation/maintenance, construction materials, concrete washout, chemicals, litter, fuels, lubricants, coolants, hydraulic fluids, any other petroleum products, and sanitary waste.
 - (b) Inspect erosion and sediment control/stormwater devices and stormwater discharge outfalls at least once every 7 calendar days and within 24 hours after a rainfall event equal to or greater than 1.0 inch that occurs within a 24 hour period. Additional monitoring may be required at the discretion of Division of Water Resources personnel if the receiving stream is 303(d) listed for turbidity and the project has had documented problems managing turbidity.
 - (c) Maintain an onsite rain gauge or use the Department's Multi-Sensor Precipitation Estimate website to maintain a daily record of rainfall amounts and dates.
 - (d) Maintain erosion and sediment control/stormwater inspection records for review by Department and Regulatory personnel upon request.
 - (e) Implement approved reclamation plans on all borrow pits, waste sites and staging areas.
 - (f) Maintain a log of turbidity test results as outlined in the Department's Procedure for Monitoring Borrow Pit Discharge.
 - (g) Provide secondary containment for bulk storage of liquid materials.
 - (h) Provide training for employees concerning general erosion and sediment control/stormwater awareness, the Department's NPDES Stormwater

Permit NCS000250 requirements, and the applicable requirements of the *General Permit, NCG010000*.

- (i) Report violations of the NPDES permit to the Engineer immediately who will notify the Division of Water Quality Regional Office within 24 hours of becoming aware of the violation.
- (3) Quality Control Program - Maintain a quality control program to control erosion, prevent sedimentation and follow provisions/conditions of permits. The quality control program shall:
- (a) Follow permit requirements related to the Design-Build Team and subcontractors' construction activities.
 - (b) Ensure that all operators and subcontractors on site have the proper erosion and sediment control/stormwater certification.
 - (c) Notify the Engineer when the required certified erosion and sediment control/stormwater personnel are not available on the job site when needed.
 - (d) Conduct the inspections required by the NPDES permit.
 - (e) Take corrective actions in the proper timeframe as required by the NPDES permit for problem areas identified during the NPDES inspections.
 - (f) Incorporate erosion control into the Work in a timely manner and stabilize disturbed areas with mulch/seed or vegetative cover on a section-by-section basis.
 - (g) Use flocculants approved by state regulatory authorities where appropriate and where required for turbidity and sedimentation reduction.
 - (h) Ensure proper installation and maintenance of temporary erosion and sediment control devices.
 - (i) Remove temporary erosion or sediment control devices when they are no longer necessary as agreed upon by the Engineer.
 - (j) The Design-Build Team's quality control and inspection procedures shall be subject to review by the Engineer. Maintain NPDES inspection records and make records available at all times for verification by the Engineer.
- (B) *Certified Foreman* - At least one Certified Foreman shall be onsite for each type of Work listed herein during the respective construction activities to control erosion, prevent sedimentation and follow permit provisions:
- (1) Foreman in charge of grading activities
 - (2) Foreman in charge of bridge or culvert construction over jurisdictional areas
 - (3) Foreman in charge of utility activities

The Design-Build Team may request to use the same person as the Level II Supervisor and Level II Foreman. This person shall be onsite whenever construction activities as described above are taking place. This request shall be approved by the Engineer prior to Work beginning.

The Design-Build Team may request to name a single Level II Foreman to oversee multiple construction activities on small bridge or culvert replacement projects. This request shall be approved by the Engineer prior to Work beginning.

- (C) *Certified Installers* - Provide at least one onsite, Level I Certified Installer for each of the following erosion and sediment control/stormwater crew:

- (1) Seeding and Mulching
- (2) Temporary Seeding
- (3) Temporary Mulching
- (4) Sodding
- (5) Silt fence or other perimeter erosion/sediment control device installations
- (6) Erosion control blanket installation
- (7) Hydraulic tackifier installation
- (8) Turbidity curtain installation
- (9) Rock ditch check/sediment dam installation
- (10) Ditch liner/matting installation
- (11) Inlet protection
- (12) Riprap placement
- (13) Stormwater BMP installations (such as but not limited to level spreaders, retention/detention devices)
- (14) Pipe installations within jurisdictional areas

If a Level I *Certified Installer* is not onsite, the Design-Build Team may substitute a Level II Foreman for a Level I Installer, provided the Level II Foreman is not tasked to another crew requiring Level II Foreman oversight.

- (D) *Certified Designer* - Include the certification number of the Level III Certified Designer on the erosion and sediment control/stormwater component of all reclamation plans and if applicable, the certification number of the Level III Certified Designer on the design of the project erosion and sediment control/stormwater plan.

11.4.3 Preconstruction Meeting

Furnish the names of the *Certified Erosion and Sediment Control/Stormwater Supervisor*, *Certified Foremen*, *Certified Installers* and *Certified Designer* and notify the Engineer of changes in certified personnel over the life of the contract within 2 days of change.

11.4.4 Ethical Responsibility

Any company performing work for the North Carolina Department of Transportation has the ethical responsibility to fully disclose any reprimand or dismissal of an employee resulting from improper testing or falsification of records.

11.4.5 Revocation or Suspension of Certification

Upon recommendation of the Chief Engineer to the certification entity, certification for *Supervisor*, *Certified Foremen*, *Certified Installers* and *Certified Designer* may be revoked or suspended with the issuance of an *Immediate Corrective Action (ICA)*, *Notice of Violation (NOV)*, or *Cease and Desist Order* for erosion and sediment control/stormwater related issues.

The Chief Engineer may recommend suspension or permanent revocation of certification due to the following:

- (A) Failure to adequately perform the duties as defined within this certification provision.
- (B) Issuance of an ICA, NOV, or Cease and Desist Order.
- (C) Failure to fully perform environmental commitments as detailed within the permit conditions and specifications.
- (D) Demonstration of erroneous documentation or reporting techniques.
- (E) Cheating or copying another candidate's work on an examination.
- (F) Intentional falsification of records.
- (G) Directing a subordinate under direct or indirect supervision to perform any of the above actions.
- (H) Dismissal from a company for any of the above reasons.
- (I) Suspension or revocation of one's certification by another entity.

Suspension or revocation of a certification will be sent by certified mail to the certificant and the Corporate Head of the company that employs the certificant.

A certificant has the right to appeal any adverse action which results in suspension or permanent revocation of certification by responding, in writing, to the Chief Engineer within 10 calendar days after receiving notice of the proposed adverse action.

Chief Engineer
1536 Mail Service Center
Raleigh, NC 27699-1536

Failure to appeal within 10 calendar days will result in the proposed adverse action becoming effective on the date specified on the certified notice. Failure to appeal within the time specified will result in a waiver of all future appeal rights regarding the adverse action taken. The certificant will not be allowed to perform duties associated with the certification during the appeal process.

The Chief Engineer will hear the appeal and make a decision within 7 days of hearing the appeal. Decision of the Chief Engineer will be final and will be made in writing to the certificant.

If a certification is temporarily suspended, the certificant shall pass any applicable written examination and any proficiency examination, at the conclusion of the specified suspension period, prior to having the certification reinstated.

11.4.6 Measurement and Payment

Certified Erosion and Sediment Control/Stormwater Supervisor, Certified Foremen, Certified Installers and Certified Designer will be incidental to the project for which no direct compensation will be made.

11.5 Procedure for Monitoring Borrow Pit Discharge

Water discharge from borrow pit sites shall not cause surface waters to exceed 50 NTUs (nephelometric turbidity unit) in streams not designated as trout waters and 10 NTUs in streams, lakes or reservoirs designated as trout waters. For lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTUs. If the turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased.

If during any operating day, the downstream water quality exceeds the standard, the Design-Build Team shall do all of the following:

- (A) Either cease discharge or modify the discharge volume or turbidity levels to bring the downstream turbidity levels into compliance, or
- (B) Evaluate the upstream conditions to determine if the exceedance of the standard is due to natural background conditions. If the background turbidity measurements exceed the standard, operation of the pit and discharge can continue as long as the stream turbidity levels are not increased due to the discharge.
- (C) Measure and record the turbidity test results (time, date and sampler) at all defined sampling locations 30 minutes after startup and at a minimum, one additional sampling of all sampling locations during that 24-hour period in which the borrow pit is discharging.
- (D) Notify DWR within 24 hours of any stream turbidity standard exceedances that are not brought into compliance.

During the Environmental Assessment required by Article 230-4 of the *Standard Specifications*, the Design-Build Team shall define the point at which the discharge enters into the State's surface waters and the appropriate sampling locations. Sampling locations shall include points upstream and downstream from the point at which the discharge enters these waters. Upstream sampling location shall be located so that it is not influenced by backwater conditions and represents natural background conditions. Downstream sampling location shall be located at the point where complete mixing of the discharge and receiving water has occurred.

The discharge shall be closely monitored when water from the dewatering activities is introduced into jurisdictional wetlands. Any time visible sedimentation (deposition of sediment) on the wetland surface is observed, the dewatering activity will be suspended until turbidity levels in the stilling basin can be reduced to a level where sediment deposition does not occur. Staining of wetland surfaces from suspended clay particles, occurring after evaporation or infiltration, does not constitute sedimentation. No activities shall occur in wetlands that adversely affect the

functioning of a wetland. Visible sedimentation shall be considered an indication of possible adverse impacts on wetland use.

The Engineer will perform independent turbidity tests on a random basis. These results will be maintained in a log within the project records. Records will include, at a minimum, turbidity test results, time, date and name of sampler. Should the Department's test results exceed those of the Design-Build Team's test results, an immediate test shall be performed jointly with the results superseding the previous test results of both the Department and the Design-Build Team.

To plan, design, construct, and maintain BMPs to address water quality standards, the Design-Build Team shall use the NCDOT *Turbidity Reduction Options for Borrow Pits Matrix*, available at the website noted below:

**[https://connect.ncdot.gov/resources/roadside/FieldOperationsDocuments/
TurbidityReductionOptionSheet.pdf](https://connect.ncdot.gov/resources/roadside/FieldOperationsDocuments/TurbidityReductionOptionSheet.pdf)**

Tier I Methods include stilling basins which are standard compensatory BMPs. Other Tier I methods are noncompensatory and shall be used when needed to meet the stream turbidity standards. Tier II Methods are also noncompensatory and are options that may be needed for protection of rare or unique resources or where special environmental conditions exist at the site which have led to additional requirements being placed in the DWR's 401 Certifications and approval letters, Isolated Wetland Permits, Riparian Buffer Authorization or a DOT Reclamation Plan's Environmental Assessment for the specific site. Should the Design-Build Team exhaust all Tier I Methods on a site exclusive of rare or unique resources or special environmental conditions, Tier II Methods may be required by regulators on a case by case basis per supplemental agreement.

The Design-Build Team may use cation exchange capacity (CEC) values from proposed site borings to plan and develop the Price Proposal for the project. CEC values exceeding 15 milliequivalents per 100 grams of soil may indicate a high potential for turbidity and should be avoided when dewatering into surface water is proposed.

No additional compensation for monitoring borrow pit discharge will be paid.

11.6 Field Office

11.6.1 Description

This Work consists of furnishing, erecting, equipping, maintaining and removing a field office for the exclusive use of Department Engineers and Inspectors at a location on the project approved by the Engineer. Provide a field office that complies with the current A. D. A. Design and Accessibility Standards, the National Electric Code, local, state, and federal regulations, and the following:

11.6.2 Procedures

Upon completion of the contract, the field office and equipment shall remain the property of the Design-Build Team. The field office shall be separated from buildings and trailers used by the Design-Build Team and shall be erected and functional as an initial operation. Failure to have the field office functional when construction activities first begin on the project, and maintained, as determined by the Engineer, throughout the project's construction duration, shall result in withholding payment of the Design-Build Team's monthly progress estimate. The Design-Build Team shall maintain the field office in an operational state throughout the project's construction duration. The Design-Build Team shall remove the field office when directed by the Engineer.

Provide a field office that is weatherproof, tightly floored and roofed, constructed with an air space above the ceiling for ventilation, supported above the ground, has a width of at least ten feet, and a floor-to-ceiling height that is at least seven feet six inches. Provide inside walls and a ceiling that are constructed of plywood, fiber board, gypsum board, or other suitable materials. Have the exterior walls, ceiling, and floor insulated.

Provide a field office with a minimum 1000-square foot floor space and that is equipped with the following:

<u>Number</u>	<u>Item</u>
1	Telephone service
1	Internet connection service with a Wi-Fi modem and two data ports in all rooms except the kitchenette and bathrooms
1	Double-pedestal desk (approximately 60 by 34 inches, at least 2,000 square inches)
1	Plan and drafting table (approximately 30 by 96 inches) with adjustable stool
1	Computer table having a minimum size of 48 by 30 by 29 inches
1	Plan rack for 24-inch by 36-inch drawings with six plan clamps
2	Four-drawer fire protection file, 15-inch drawer width, minimum UL rating of Class 350
6	Adjustable five-leg base rolling office chairs
1	Wastebasket per room
1	Telephone
1	Print / copy / scan / fax machine (8-inch x 11-inch and 11-inch x 17-inch prints / copies)

11.6.3 Windows and Doors

Provide a field office with at least three windows with blinds, each having an area of at least 540 square inches, capable of being easily opened and secured from the inside and having at least two exterior passage doors. Provide doors at least 30 inches in width and 78 inches in height. Provide screens for all windows and doors. Equip exterior passage doors with locks, and furnish at least two keys to the Engineer. Provide accessibility in compliance with the current A. D. A. Design and Accessibility Standards, and the State Building Code; and maintain them free from obstructions.

11.6.4 Steps

Provide accessibility in compliance with the current A. D. A. Design and Accessibility Standards, and the State Building Code; and maintain them free from obstructions.

11.6.5 Storage Facility for Nuclear Gauge

Provide an outside storage facility for the Department's nuclear gauge. Provide a facility that has a minimum 64-square foot floor space, is weatherproof, tightly floored and roofed, and has a tamper resistant key operated lock. The storage facility shall not be located within ten feet of any other structure including the field office. Furnish at least two keys to the Engineer.

11.6.6 Lighting, Heating and Air Conditioning

The field office shall have satisfactory lighting, electrical outlets, heating equipment, an exhaust fan, and an air conditioner connected to an operational power source. Provide at least one lighting fixture in each room and at least one fluorescent light fixture over the plan and drafting table. Furnish electrical current and fuel for heating equipment.

11.6.7 Fire Extinguishers

Furnish and maintain one fire extinguisher for each exterior passage door. Fire extinguishers may be chemical or dry powder. UL Classification 10-B:C (minimum), suitable for Type A:B:C: fires. Provide, mount and maintain fire extinguishers in accordance with OSHA Safety and Health Standards.

11.6.8 Toilets

Provide a toilet conforming to the requirements of the state and local boards of health or other bodies or courts having jurisdiction in the area. When separate facilities for men and women are not available, place a sign with the words "Rest Room" (with letters at least one inch in height) over the doorway, and provide an adequate positive locking system on the inside of the doorway. Maintain responsibility for the water and sewer connections or the installation and connection of a water well, and septic tank and drain field. These facilities shall conform to all local and state permits.

11.6.9 Utilities

Except for telephone service, make arrangements for necessary internet and utility connections, maintain internet and utility connections, pay internet and utility service fees and bills, and make arrangements for final disconnection of internet and utility connections. Furnish a telephone in each field office and permit the work necessary to install it. Installation and service fees for the telephone will be paid for by the Department.

11.6.10 Storage Facility for Test Equipment

Provide a storage facility that is separated from the field office, for storage of test equipment, other than the nuclear gauge. Provide a facility that has a minimum 64-square foot floor space, is weatherproof, tightly floored and roofed, and has a tamper resistant key operated lock. Furnish at least two keys to the Engineer.

11.6.11 Miscellaneous Items

The field office shall also include the following:

1. A certification that the office is free of asbestos and other hazardous materials
2. A broom, dustpan, mop and bucket, and general cleaning supplies
3. Provide and maintain an all-weather parking area for six vehicles, including graveled access to the paved surface

11.7 Haul Roads

Revise the *Standard Specifications* as follows:

Page 1-45, Article 105-15 RESTRICTION OF LOAD LIMITS, line 31, add the following after second sentence of the second paragraph:

At least 30 days prior to use, the Design-Build Team shall notify the Engineer of any public road proposed for use as a haul road for the project.

11.8 Equipment Idling Guidelines

Exercise reduced fuel consumption and reduced equipment emissions during the construction of all Work associated with this contract. Except as allowed otherwise elsewhere in this project special provision, employees engaged in the construction of this project should turn off vehicles when stopped for more than thirty (30) consecutive minutes and off-highway equipment (equipment) should idle no longer than fifteen (15) consecutive minutes.

These guidelines for turning off vehicles and equipment when idling do not apply to:

1. Idling when queuing.
2. Idling to verify the vehicle / equipment is in safe operating condition.
3. Idling for testing, servicing, repairing or diagnostic purposes.
4. Idling necessary to accomplish work for which the vehicle / equipment was designed (such as operating a crane, mixing concrete, etc.).
5. Idling required to bring the machine system to operating temperature.
6. Emergency vehicles, utility company, construction, and maintenance vehicles where the engines must run to perform needed work.
7. Idling to ensure safe operation of the vehicle / equipment.

8. Idling when the propulsion engine is providing auxiliary power for other than heating or air conditioning, except as allowed below, such as hydraulic systems for pavers.
9. When specific traffic, safety, or emergency situations arise.
10. Limited idling, no longer than 30 minutes, to provide for the safety of occupants (e.g. to run the heater) when the ambient temperature is less than 32 degrees Fahrenheit.
11. Limited idling, no longer than 30 minutes, to provide for the safety of occupants (e.g. to run the air conditioning) when the ambient temperature is greater than 90 degrees Fahrenheit.
12. Diesel powered vehicles / equipment may idle for up to 30 minutes to minimize restart problems.

Any vehicle or equipment in which the primary source of fuel is natural gas or electricity is exempt from the idling limitations set forth in this project special provision.

11.9 Plant and Pest Quarantines (Imported Fire Ant, Guava Root Knot Nematode, Spongy Moth (formerly known as Gypsy Moth), Witchweed, Cogon Grass, and any Other Regulated Noxious Weed or Plant Pest)

11.9.1 Within Quarantined Area

This project may be within a county regulated for plant and / or pests. If the project or any part of the Design-Build Team's operations is located within a quarantined area, thoroughly clean all equipment prior to moving out of the quarantined area. Comply with federal / state regulations by obtaining a certificate or limited permit for any regulated article moving from the quarantined area.

11.9.2 Originating in a Quarantined County

Obtain a certificate or limited permit issued by the N.C. Department of Agriculture / United States Department of Agriculture. Have the certificate or limited permit accompany the article when it arrives at the project site.

11.9.3 Contact

Contact the N.C. Department of Agriculture / United States Department of Agriculture at 1-800-206-9333, 919-707-3730, or:

<https://www.ncagr.gov/divisions/plant-industry/plant-protection/plant-industry-plant-pest-quarantines>

to determine those specific project sites located in the quarantined area or for any regulated article used on this project originating in a quarantined county.

11.9.4 Regulated Articles Include

1. Soil, sand, gravel, compost, peat, humus, muck, and decomposed manure, separately or with other articles. This includes movement of articles listed above that may be associated with cut / waste, ditch pulling, and shoulder cutting.

2. Plants with roots including grass sod
3. Plant crowns and roots
4. Bulbs, corms, rhizomes, and tubers of ornamental plants
5. Hay, straw, fodder, and plant litter of any kind
6. Clearing and grubbing debris
7. Used agricultural cultivating and harvesting equipment
8. Used earth-moving equipment
9. Any other products, articles, or means of conveyance, of any character, if determined by an inspector to present a hazard of spreading imported fire ant, guava root knot nematode, spongy moth (formerly known as gypsy moth), witchweed, cogon grass, or other regulated noxious weed or plant pest.

11.10 Electronic Ticketing System

11.10.1 Description

At the Design-Build Team's option, the use of an electronic ticketing system for reporting individual and cumulative asphalt material deliveries may be utilized on this project. At the preconstruction conference, the Design-Build Team shall notify the Engineer if they intend to utilize an electronic ticketing system for reporting individual and cumulative asphalt material deliveries to the project.

11.10.2 Electronic Ticketing Requirements

- a. The electronic ticketing system shall be fully integrated with the load read-out system at the plant. The system shall be designed so data inputs from scales cannot be altered by either the Design-Build Team or the Department.
- b. Material supplier shall test to confirm that ticketing data can be shared from the originating system no less than 30 days prior to project start.
- c. After each truck is loaded, ticket data shall be electronically captured, and ticket information uploaded via Application Programming Interface (API) to the Department.
- d. Obtain security token from NCDOT for access to E-Ticketing portal (to send tickets). To request a Security Key, fill out the below E-Ticketing Security Request Form: <https://forms.office.com/g/XnT7QeRtgt>
- e. Obtain API from NCDOT containing the required e-ticketing data fields and format. Download the API from the NCDOT E-ticketing Webpage: <https://connect.ncdot.gov/projects/construction/E-Ticketing/Pages/default.aspx>
- f. Provide all ticket information in real time and daily summaries to the Department's designated web portal. If the project contains locations with limited cellular service, an alternative course of action shall be agreed upon.

- g. Electronic ticketing submissions shall be sent between the Material Supplier and the Department.
- h. The electronic ticket shall contain the following information:

- Date
- Time
- Contract Number
- Supplier Name
- Design-Build Team Name
- Material
- JMF
- Gross Weight
- Tare Weight
- Net Weight
- Load Number
- Cumulative Weight
- Truck Number
- Weighmaster Certification
- Weighmaster Expiration
- Weighmaster Name
- Facility Name
- Plant Certification Number
- Ticket Number
- Hauling Firm (optional)
- Voided Ticket Number (if necessary)
- Original Ticket Number (if necessary)
- Supplier Revision (If necessary)

The Design-Build Team /supplier may use the electronic ticketing system of their choice to meet the requirements of this Standard Special Provision.

11.11 Temporary Shoring

11.11.1 Description

Temporary shoring includes cantilever, braced and anchored shoring and temporary mechanically stabilized earth (MSE) walls. Temporary shoring does not include trench boxes. At the Design-Build Team's option, use any type of temporary shoring, unless noted otherwise in the plans developed by the Design-Build Team or as directed.

Design and construct temporary shoring based on actual elevations and shoring dimensions in accordance with the contract, the plans developed by the Design-Build Team and accepted submittals. Construct temporary shoring at locations shown in the plans developed by the Design-Build Team and as directed. Temporary shoring shall be required to maintain traffic when a 2:1 (H:V) slope from the top of an embankment or bottom of an excavation will intersect the existing

ground line less than five feet from the edge of pavement of an open travelway. This Standard Special Provision does not apply to pipe, inlet or utility installations unless noted otherwise in the plans developed by the Design-Build Team.

Positive protection includes concrete barrier and temporary guardrail. Provide positive protection for temporary shoring at locations shown in the plans developed by the Design-Build Team and as directed. Positive protection shall be required if temporary shoring is located in the clear zone in accordance with the AASHTO *Roadside Design Guide*.

(A) Cantilever and Braced Shoring

Cantilever shoring consists of steel sheet piles or H-piles with timber lagging. Braced shoring consists of sheet piles or H-piles with timber lagging and bracing such as beams, plates, walers, struts, rakers, etc. Define “piles” as sheet piles or H-piles.

(B) Anchored Shoring

Anchored shoring consists of sheet piles with walers or H-piles with timber lagging anchored with ground or helical anchors. Driven anchors may be accepted at the discretion of the Engineer. A ground anchor consists of a grouted steel bar or multi-strand tendon with an anchorage. A helical anchor consists of a lead section with a central steel shaft and at least one helix steel plate followed by extensions with only central shafts (no helixes) and an anchorage. Anchorages consist of steel bearing plates with washers and hex nuts for bars or steel wedge plates and wedges for strands. Use a prequalified Anchored Wall contractor to install ground anchors. Define “anchors” as ground, helical or driven anchors.

(C) Temporary MSE Walls

Temporary MSE walls include temporary geosynthetic and wire walls. Define “temporary wall” as a temporary MSE wall and “Temporary Wall Vendor” as the vendor supplying the temporary MSE wall. Define “reinforcement” as geotextile, geogrid, geostrip, welded wire grid or metallic strip reinforcement.

Temporary geosynthetic walls consist of geotextiles or geogrids wrapped behind welded wire facing or geostrips connected to welded wire facing. Define “temporary geotextile wall” as a temporary geosynthetic wall with geotextile reinforcement, “temporary geogrid wall” as a temporary geosynthetic wall with geogrid reinforcement and “temporary geostrip wall” as a temporary geosynthetic wall with geostrip reinforcement.

Temporary wire walls consist of welded wire grid or metallic strip reinforcement connected to welded wire facing. Define “Wire Wall Vendor” as the vendor supplying the temporary wire wall.

(D) Embedment

Define “embedment” for cantilever, braced and anchored shoring as the pile depth below the grade in front of shoring. Define “embedment” for temporary walls as the wall embedment below the grade at the wall face.

(E) Positive Protection

Define “unanchored or anchored portable concrete barrier” as portable concrete barrier (PCB) that meets *Roadway Standard Drawing* No. 1170.01. Define “concrete barrier” as unanchored or anchored PCB or an approved equal. Define “temporary guardrail” as temporary steel beam guardrail that meets *Roadway Standard Drawing* No. 862.02.

11.11.2 Materials

Refer to the *Standard Specifications*.

Item	Section
Concrete Barrier Materials	1170-2
Flowable Fill, Excavatable	1000-7
Geosynthetics	1056
Grout, Type 1	1003
Portland Cement	1024-1
Portland Cement Concrete	1000
Select Materials	1016
Steel Beam Guardrail Materials	862-2
Steel Plates	1072-2
Steel Sheet Piles and H-Piles	1084
Untreated Timber	1082-2
Water	1024-4
Welded Wire Reinforcement	1070-3

Provide Type 6 material certifications for shoring materials in accordance with Article 106-3 of the *Standard Specifications*. Use Class IV select material for temporary guardrail. Use Class A concrete that meets Article 450-2 of the *Standard Specifications* or Type 1 grout for drilled-in piles. Provide untreated timber with a thickness of at least three inches and a bending stress of at least 1,000 pounds per square inch for timber lagging. Provide steel bracing that meets ASTM A36.

(A) Shoring Backfill

Use Class II, Type 1, Class III, Class V or Class VI select material or material that meets AASHTO M 145 for soil classification A-2-4 with a maximum PI of 6 for shoring backfill except do not use A-2-4 soil for backfill around culverts.

(B) Anchors

Store anchor materials on blocking a minimum of 12 inches above the ground and protect it at all times from damage; and when placing in the Work make sure it is free from dirt, dust, loose mill scale, loose rust, paint, oil or other foreign materials. Load, transport, unload and store anchor materials so materials are kept clean and free of damage. Bent, damaged or defective materials shall be rejected.

(1) Ground Anchors

Use high-strength deformed steel bars that meet AASHTO M 275 or seven-wire strands that meet ASTM A886 or Article 1070-5 of the *Standard Specifications*. Splice bars in accordance with Article 1070-9 of the *Standard Specifications*. Do not splice strands. Use bondbreakers, spacers and centralizers that meet Article 6.3.5 of the AASHTO *LRFD Bridge Construction Specifications*.

Use neat cement grout that only contains cement and water with a water cement ratio of 0.4 to 0.5 which is approximately 5.5 gallons of water per 94 pounds of Portland cement. Provide grout with a compressive strength at three and 28 days of at least 1,500 and 4,000 psi, respectively.

(2) Helical Anchors

Use helical anchors with an ICC Evaluation Service, Inc. (ICC-ES) report. Provide couplers, thread bar adapters and bolts recommended by the Anchor Manufacturer to connect helical anchors together and to piles.

(3) Anchorages

Provide steel plates for bearing plates and steel washers, hex nuts, wedge plates and wedges recommended by the Anchor Manufacturer.

(C) Temporary Walls

(1) Welded Wire Facing

Use welded wire reinforcement for welded wire facing, struts and wires. For temporary wire walls, provide welded wire facing supplied by the Wire Wall Vendor or a manufacturer approved or licensed by the vendor. For temporary wire walls with separate reinforcement and facing components, provide connectors (e.g., bars, clamps, plates, etc.) and fasteners (e.g., bolts, nuts, washers, etc.) required by the Wire Wall Vendor.

(2) Geotextiles

Provide Type 2 geotextile for separation and retention geotextiles. Provide Type 5 geotextile for geotextile reinforcement with ultimate tensile strengths in accordance with the accepted submittals.

(3) Geogrid and Geostrip Reinforcement

Use geogrids with a roll width of at least four feet. Use geogrids for geogrid reinforcement and geostrips for geostrip reinforcement with an “approved” status code in accordance with the NCDOT Geosynthetic Reinforcement Evaluation Program. The list of approved geogrids and geostrips is available from:

connect.ncdot.gov/resources/Geological/Pages/Products.aspx

Provide geogrids and geostrips with design strengths in accordance with the accepted submittals. Geogrids and geostrips are approved for short-term design strengths (three-year design life) in the machine direction (MD) and cross-machine direction (CD) based on material type. Define material type from the website above for shoring backfill as follows:

Material Type	Shoring Backfill
Borrow	A-2-4 Soil
Fine Aggregate	Class II, Type 1 or Class III Select Material
Coarse Aggregate	Class V or VI Select Material

(4) Welded Wire Grid and Metallic Strip Reinforcement

Provide welded wire grid and metallic strip reinforcement supplied by the Wire Wall Vendor or a manufacturer approved or licensed by the vendor. Use welded wire grid reinforcement (“mesh”, “mats” and “ladders”) that meet Article 1070-3 of the *Standard Specifications* and metallic strip reinforcement (“straps”) that meet ASTM A572 or A1011.

11.11.3 Preconstruction Requirements

(A) Concrete Barrier

Define “clear distance” behind concrete barrier as the horizontal distance between the barrier and edge of pavement. The minimum required clear distance for concrete barrier shall be shown in the plans developed by the Design-Build Team. At the Design-Build Team’s option or if the minimum required clear distance is not available, set concrete barrier next to and up against traffic side of temporary shoring except for barrier above temporary walls. Concrete barrier with the minimum required clear distance shall be required above temporary walls.

(B) Temporary Guardrail

Define “clear distance” behind temporary guardrail as the horizontal distance between guardrail posts and temporary shoring. At the Design-Build Team’s option or if clear distance for cantilever, braced and anchored shoring is less than four feet, attach guardrail to traffic side of shoring as shown in the plans developed by the Design-Build Team. Place ABC in clear distance and around guardrail posts instead of pavement. Do not use temporary guardrail above temporary walls.

(C) Temporary Shoring Designs

Before beginning temporary shoring design, survey existing ground elevations in the vicinity of shoring locations to determine actual design heights (H). Submit .pdf files of working drawings and design calculations for temporary shoring designs in accordance with Article 105-2 of the *Standard Specifications*. Submit working drawings showing plan views, shoring profiles, typical sections and details of temporary shoring design and construction sequence. Do not begin shoring construction until a design submittal is accepted.

Have cantilever and braced shoring designed, detailed and sealed by an engineer licensed in the state of North Carolina. Use a prequalified Anchored Wall Design Consultant to design anchored shoring. Provide anchored shoring designs sealed by a Design Engineer approved as a Geotechnical Engineer (key person) for an Anchored Wall Design Consultant. Include details in anchored shoring working drawings of anchor locations and lock-off loads, unit grout / ground bond strengths for ground anchors or minimum installation torque and torsional strength rating for helical anchors and if necessary, obstructions extending through shoring or interfering with anchors. Include details in the anchored shoring construction sequence of pile and anchor installation, excavation and anchor testing.

Provide temporary wall designs sealed by a Design Engineer licensed in the state of North Carolina and employed or contracted by the Temporary Wall Vendor. Include details in temporary wall working drawings of geotextile and reinforcement types, locations and directions and obstructions extending through walls or interfering with reinforcement.

(1) Soil Parameters

Design temporary shoring for the assumed soil parameters and groundwater or flood elevations shown in the plans developed by the Design-Build Team. Assume the following soil parameters for shoring backfill:

- (a) Unit weight (γ) = 120 pcf;

(b)	Friction Angle (ϕ)	Shoring Backfill
	30°	A-2-4 Soil
	34°	Class II, Type 1 or Class III Select Material
	38°	Class V or VI Select Material

(c) Cohesion (c) = 0 psf.

(2) Traffic Surcharge

Design temporary shoring for a traffic surcharge of 250 pounds per square foot if traffic will be above and within H of shoring. This traffic surcharge shall not apply to construction traffic. Design temporary shoring for any construction surcharge if construction traffic will be above and within H of shoring. Design temporary shoring for a traffic (live load) surcharge in accordance with Article 11.5.6 of the AASHTO *LRFD Bridge Design Specifications*.

(3) Cantilever, Braced and Anchored Shoring Designs

Use shoring backfill for fill sections and voids between cantilever, braced and anchored shoring and the critical failure surface. Use concrete or Type 1 grout for embedded portions of drilled-in H-piles. Do not use drilled-in sheet piles.

Define “top of shoring” for cantilever, braced and anchored shoring as where the grade intersects the back of sheet piles or H-piles and timber lagging. Design cantilever, braced and anchored shoring for a traffic impact load of 2,000 pounds per foot applied 18 inches above top of shoring if concrete barrier is above and next to shoring or temporary guardrail is above and attached to shoring. Extend cantilever, braced and anchored shoring at least 32 inches above top of shoring if shoring is designed for traffic impact. Otherwise, extend shoring at least six inches above top of shoring.

Design cantilever, braced and anchored shoring for a maximum deflection of three inches if the horizontal distance to the closest edge of pavement or structure is less than H. Otherwise, design shoring for a maximum deflection of six inches. Design cantilever and braced shoring in accordance with the plans developed by the Design-Build Team and AASHTO *Guide Design Specifications for Bridge Temporary Works*.

Design anchored shoring in accordance with the plans developed by the Design-Build Team and Article 11.9 of the AASHTO *LRFD Bridge Design Specifications*. Use a resistance factor of 0.80 for tensile resistance of anchors with bars, strands or shafts. Extend the unbonded length for ground anchors and the shallowest helix for helical anchors at least five feet behind the critical failure surface. Do not extend anchors beyond right of way or easement limits. If existing or future obstructions such as foundations, guardrail posts, pavements, pipes, inlets or utilities will

interfere with anchors, maintain a clearance of at least six inches between obstructions and anchors.

(4) Temporary Wall Designs

Use shoring backfill in the reinforced zone of temporary walls. Separation geotextiles shall be required between shoring backfill and backfill, natural ground or culverts along the sides of the reinforced zone perpendicular to the wall face. For Class V or VI select material in the reinforced zone, separation geotextiles shall also be required between shoring backfill and backfill or natural ground on top of and at the back of the reinforced zone.

Design temporary walls in accordance with the plans developed by the Design-Build Team and Article 11.10 of the AASHTO *LRFD Bridge Design Specifications*. Embed temporary walls at least 18 inches except for walls on structures or rock as determined by the Engineer. Use a uniform reinforcement length throughout the wall height of at least 0.7H or six feet, whichever is longer. Extend the reinforced zone at least six inches beyond end of reinforcement. Do not locate the reinforced zone outside right of way or easement limits.

Use the simplified method for determining maximum reinforcement loads in accordance with the AASHTO LRFD specifications. For geotextile reinforcement, use geotextile properties approved by the Department or default values in accordance with the AASHTO LRFD specifications. For geogrid and geostrip reinforcement, use approved geosynthetic reinforcement properties available from the website shown elsewhere in this provision. Use geosynthetic properties for the direction reinforcement will be installed, a three-year design life and shoring backfill to be used in the reinforced zone.

Do not use more than four different reinforcement strengths for each temporary geosynthetic wall. Design temporary geotextile walls for a reinforcement coverage ratio (R_c) of 1.0. For temporary geogrid walls with an R_c of less than 1.0, use a maximum horizontal clearance between geogrids of three feet and stagger reinforcement so geogrids are centered over gaps in the reinforcement layer below.

For temporary geosynthetic walls, use “L” shaped welded wire facing with 18-inch to 24-inch long legs. Locate geosynthetic reinforcement so reinforcement layers are at the same level as the horizontal legs of welded wire facing. Use vertical reinforcement spacing equal to facing height. Wrap geotextile or geogrid reinforcement behind welded wire facing and extend reinforcement at least three feet back behind facing into shoring backfill. Attach geostrip reinforcement to welded wire facing with a connection approved by the Department.

For temporary wire walls with separate reinforcement and facing components, attach welded wire grid or metallic strip reinforcement to welded wire facing with a connection approved by the Department. For temporary geogrid, geostrip and

wire walls, retain shoring backfill at welded wire facing with retention geotextiles and extend geotextiles at least three feet back behind facing into backfill.

(D) Preconstruction Meeting

The Engineer may require a shoring preconstruction meeting to discuss the construction, inspection and testing of the temporary shoring. If required, and if this meeting occurs before all shoring submittals have been accepted, additional preconstruction meetings may be required before beginning construction of temporary shoring without accepted submittals. The Resident, District or Bridge Maintenance Engineer, Area Construction Engineer, Geotechnical Operations Engineer, Design-Build Team and Shoring contractor Superintendent will attend preconstruction meetings.

11.11.4 Construction Methods

Control drainage during construction in the vicinity of shoring. Direct run off away from shoring and shoring backfill. Contain and maintain backfill and protect material from erosion.

Install positive protection in accordance with the contract and accepted submittals. Use PCB in accordance with Section 1170 of the *Standard Specifications* and *Roadway Standard Drawing* No. 1170.01. Use temporary guardrail in accordance with Section 862 of the *Standard Specifications* and *Roadway Standard Drawing* Nos. 862.01, 862.02 and 862.03.

(A) Tolerances

Construct shoring with the following tolerances:

- (1) Horizontal wires of welded wire facing are level in all directions,
- (2) Shoring location is within six inches of horizontal and vertical alignment shown in the accepted submittals, and
- (3) Shoring plumbness (batter) is not negative and within two degrees of vertical.

(B) Cantilever, Braced and Anchored Shoring Installation

If overexcavation behind cantilever, braced or anchored shoring is shown in the accepted submittals, excavate before installing piles. Otherwise, install piles before excavating for shoring. Install cantilever, braced or anchored shoring in accordance with the construction sequence shown in the accepted submittals. Remove piles and if applicable, timber lagging when shoring is no longer needed.

(1) Pile Installation

Install piles with the minimum required embedment and extension in accordance with Subarticles 450-3(D) and 450-3(E) of the *Standard Specifications* except that

a pile driving equipment data form is not required. Piles may be installed with a vibratory hammer as approved by the Engineer.

Do not splice sheet piles. Use pile excavation to install drilled-in H-piles. After filling holes with concrete or Type 1 grout to the elevations shown in the accepted submittals, remove any fluids and fill remaining portions of holes with flowable fill. Cure concrete or grout at least seven days before excavating.

Notify the Engineer if refusal is reached before pile excavation or driven piles attain the minimum required embedment. When this occurs, a revised design submittal may be required.

(2) Excavation

Excavate in front of piles from the top down in accordance with the accepted submittals. For H-piles with timber lagging and braced and anchored shoring, excavate in staged horizontal lifts with a maximum height of five feet. Remove flowable fill and material in between H-piles, as needed, to install timber lagging. Position lagging with at least three inches of contact in the horizontal direction between the lagging and pile flanges. Do not excavate the next lift until timber lagging for the current lift is installed and, if applicable, bracing and anchors for the current lift are accepted. Backfill behind cantilever, braced or anchored shoring with shoring backfill.

(3) Anchor Installation

If applicable, install foundations located behind anchored shoring before installing anchors. Fabricate and install ground anchors in accordance with the accepted submittals, Articles 6.4 and 6.5 of the AASHTO *LRFD Bridge Construction Specifications* and the following unless otherwise approved:

- (a) Materials in accordance with this provision shall be required instead of materials conforming to Articles 6.4 and 6.5.3 of the AASHTO LRFD Specifications,
- (b) Encapsulation-protected ground anchors in accordance with Article 6.4.1.2 of the AASHTO LRFD specifications are not required, and
- (c) Corrosion protection for unbonded lengths of ground anchors and anchorage covers are not required.
- (d) Mix and place neat cement grout in accordance with Subarticles 1003-5, 1003-6 and 1003-7 of the *Standard Specifications*. Measure grout temperature, density and flow during grouting with at least the same frequency grout cubes are made for compressive strength. Perform density and flow field tests in the presence of the Engineer in accordance with

American National Standards Institute / American Petroleum Institute Recommended Practice 13B-1 (Section 4, Mud Balance) and ASTM C939 (Flow Cone), respectively.

Install helical anchors in accordance with the accepted submittals and Anchor Manufacturer's instructions. Measure torque during installation and do not exceed the torsional strength rating of the helical anchor. Attain the minimum required installation torque and penetration before terminating anchor installation. When replacing a helical anchor, embed last helix of the replacement anchor at least three helix plate diameters past the location of the first helix of the previous anchor.

(4) Anchor Testing

Proof test and lock-off anchors in accordance with the accepted submittals and Article 6.5.5 of the AASHTO *LRFD Bridge Construction Specifications* except for the acceptance criteria in Article 6.5.5.5. For the AASHTO LRFD specifications, "ground anchor" refers to a ground or helical anchor and "tendon" refers to a bar, strand or shaft.

(a) Anchor Acceptance

Anchor acceptance shall be based in part on the following criteria.

- (i) For ground and helical anchors, total movement is less than 0.04 inches between the one and ten minute readings or less than 0.08 inches between the six and 60 minute readings.
- (ii) For ground anchors, total movement at maximum test load exceeds 80% of the theoretical elastic elongation of the unbonded length.

(b) Anchor Test Results

Submit .pdf files of anchor test records including movement versus load plots for each load increment within 24 hours of completing each row of anchors. The Engineer will review the test records to determine if the anchors are acceptable.

If the Engineer determines an anchor is unacceptable, revise the anchor design or installation methods. Submit a revised anchored shoring design for acceptance and provide an acceptable anchor with the revised design or installation methods. If required, replace the anchor or provide additional anchors with the revised design or installation methods.

(C) Temporary Wall Installation

Excavate as necessary for temporary walls in accordance with the plans developed by the Design-Build Team and accepted submittals. If applicable, install foundations located in the reinforced zone before placing shoring backfill or reinforcement unless otherwise approved. Notify the Engineer when foundation excavation is complete. Do not place shoring backfill or reinforcement until excavation dimensions and foundation material are approved.

Erect welded wire facing so the wall position is as shown in the plans developed by the Design-Build Team and accepted submittals. Set welded wire facing adjacent to each other in the horizontal and vertical direction to completely cover the wall face with facing. Stagger welded wire facing to create a running bond by centering facing over joints in the row below.

Attach geostrip reinforcement to welded wire facing and wrap geotextile reinforcement and retention geotextiles behind welded wire facing as shown in the plans developed by the Design-Build Team and accepted submittals. Cover geotextiles with at least three inches of shoring backfill. Overlap adjacent geotextile reinforcement and retention and separation geotextiles at least 18 inches with seams oriented perpendicular to the wall face. Hold geotextiles in place with wire staples or anchor pins as needed.

Place reinforcement within three inches of locations shown in the plans developed by the Design-Build Team and accepted submittals. Before placing shoring backfill, pull geosynthetic reinforcement taut so it is in tension and free of kinks, folds, wrinkles and creases. Install reinforcement with the direction shown in the plans developed by the Design-Build Team and accepted submittals. For temporary wire walls with separate reinforcement and facing components, attach welded wire grid or metallic strip reinforcement to welded wire facing as shown in the accepted submittals. Do not splice or overlap reinforcement so seams are parallel to the wall face. Contact the Engineer when unanticipated existing or future obstructions such as foundations, pavements, pipes, inlets or utilities will interfere with reinforcement.

Place shoring backfill in the reinforced zone in eight-inch to ten-inch thick lifts. Compact A-2-4 soil and Class II, Type 1 and Class III select material in accordance with Subarticle 235-3(C) of the *Standard Specifications*. Use only hand operated compaction equipment to compact backfill within three feet of welded wire facing. At a distance greater than three feet, compact shoring backfill with at least four passes of an eight-ton to ten-ton vibratory roller in a direction parallel to the wall face. Smooth wheeled or rubber tired rollers are also acceptable for compacting backfill. Do not use sheepsfoot, grid rollers or other types of compaction equipment with feet. Do not displace or damage reinforcement when placing and compacting shoring backfill. End dumping directly on geosynthetic reinforcement shall not be permitted. Do not operate heavy equipment on reinforcement until it is covered with at least eight inches of shoring backfill. Replace any damaged reinforcement to the satisfaction of the Engineer.

Backfill for temporary walls outside the reinforced zone in accordance with Article 410-8 of the *Standard Specifications*. Bench temporary walls into the sides of excavations where applicable. For temporary geosynthetic walls with top of wall within five feet of finished grade, remove top facing and incorporate top reinforcement layer into fill when placing fill in front of wall. Temporary walls remain in place permanently unless otherwise required.

11.12 NCDOT General Seed Specifications for Seed Quality

Seed shall be sampled and tested by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory. When said samples are collected, the vendor shall supply an independent laboratory report for each lot to be tested. Results from seed so sampled shall be final. Seed not meeting the specifications shall be rejected by the Department of Transportation and shall not be delivered to North Carolina Department of Transportation warehouses. If seed has been delivered it shall be available for pickup and replacement at the supplier's expense.

Any re-labeling required by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory, that would cause the label to reflect as otherwise specified herein shall be rejected by the North Carolina Department of Transportation.

Seed shall be free from seeds of the noxious weeds Johnsongrass, Balloonvine, Jimsonweed, Witchweed, Itchgrass, Serrated Tussock, Showy Crotalaria, Smooth Crotalaria, Sickledpod, Sandbur, Wild Onion, and Wild Garlic. Seed shall not be labeled with the above weed species on the seed analysis label. Tolerances as applied by the Association of Official Seed Analysts will NOT be allowed for the above noxious weeds except for Wild Onion and Wild Garlic.

Tolerances established by the Association of Official Seed Analysts will generally be recognized. However, for the purpose of figuring pure live seed, the found pure seed and found germination percentages as reported by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory will be used. Allowances, as established by the NCDOT, will be recognized for minimum pure live seed as listed on the following pages. The specifications for restricted noxious weed seed refers to the number per pound as follows:

Restricted Noxious Weed	Limitations per Lb. of Seed	Restricted Noxious Weed	Limitations per Lb. of Seed
Blessed Thistle	4 seeds	Cornflower (Ragged Robin)	27 seeds
Cocklebur	4 seeds	Texas Panicum	27 seeds
Spurred Anoda	4 seeds	Bracted Plantain	54 seeds
Velvetleaf	4 seeds	Buckhorn Plantain	54 seeds
Morning-glory	8 seeds	Broadleaf Dock	54 seeds
Corn Cockle	10 seeds	Curly Dock	54 seeds
Wild Radish	12 seeds	Dodder	54 seeds
Purple Nutsedge	27 seeds	Giant Foxtail	54 seeds
Yellow Nutsedge	27 seeds	Horsenettle	54 seeds
Canada Thistle	27 seeds	Quackgrass	54 seeds
Field Bindweed	27 seeds	Wild Mustard	54 seeds
Hedge Bindweed	27 seeds		

Seed of Pensacola Bahiagrass shall not contain more than 7% inert matter, Kentucky Bluegrass, Centipede and Fine or Hard Fescue shall not contain more than 5% inert matter whereas a maximum of 2% inert matter will be allowed on all other kinds of seed. In addition, all seed shall not contain more than 2% other crop seed nor more than 1% total weed seed. The germination rate as tested by the North Carolina Department of Agriculture shall not fall below 70%, which includes both dormant and hard seed. Seed shall be labeled with not more than 7%, 5% or 2% inert matter (according to above specifications), 2% other crop seed and 1% total weed seed.

Exceptions may be made for minimum pure live seed allowances when cases of seed variety shortages are verified. Pure live seed percentages will be applied in a verified shortage situation. Those purchase orders of deficient seed lots will be credited with the percentage that the seed is deficient.

FURTHER SPECIFICATIONS FOR EACH SEED GROUP ARE GIVEN BELOW:

Minimum 85% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 83% pure live seed will not be approved.

Sericea Lespedeza
Oats (seeds)

Minimum 80% pure live seed; maximum 1% total weed seed; maximum 2% total other crop; maximum 144 restricted noxious weed seed per pound. Seed less than 78% pure live seed will not be approved.

Tall Fescue (all approved varieties)	Bermudagrass
Kobe Lespedeza	Browntop Millet
Korean Lespedeza	German Millet - Strain R
Weeping Lovegrass	Clover - Red / White / Crimson
Carpetgrass	

Minimum 78% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 76% pure live seed will not be approved.

Common or Sweet Sundangrass

Minimum 76% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 74% pure live seed will not be approved.

Rye (grain; all varieties)
Kentucky Bluegrass (all approved varieties)
Hard Fescue (all approved varieties)
Shrub (bicolor) Lespedeza

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 noxious weed seed per pound. Seed less than 70% pure live seed will not be approved.

Centipedegrass
Crownvetch
Pensacola Bahiagrass
Creeping Red Fescue

Japanese Millet
Reed Canary Grass
Zoysia

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 5% inert matter; maximum 144 restricted noxious weed seed per pound.

Barnyard Grass
Big Bluestem
Little Bluestem
Bristly Locust
Birdsfoot Trefoil
Indiangrass
Orchardgrass
Switchgrass
Yellow Blossom Sweet Clover

11.13 Permanent Vegetation Establishment

Establish permanent vegetation stands of the Long Term Stabilization mixtures identified in the Erosion and Sedimentation Control Scope of Work found elsewhere in this RFP. During the period between initial vegetation planting and final project acceptance, perform all Work necessary to establish 80% coverage of permanent vegetation within the project limits, as well as, in borrow and waste pits. This Work shall include erosion control device maintenance and installation, repair seeding and mulching, supplemental seeding and mulching, mowing, and fertilizer topdressing, as directed. All Work shall be performed in accordance with the Erosion and Sedimentation Control Scope of Work found elsewhere in this RFP and the applicable sections of the Standard Specifications.

Once the Engineer has determined that the permanent vegetation establishment requirement has been achieved at an 80% vegetation density (the amount of established vegetation per given area to stabilize the soil) and no erodible areas exist within the project limits, the Design-Build Team will be notified to remove the remaining erosion control devices that are no longer needed. The Design-Build Team shall be responsible for, and shall correct, any areas disturbed by operations performed in permanent vegetation establishment and the removal of temporary erosion control measures, whether occurring prior to or after placing traffic on the project.

11.14 Drainage Pipe

Where shown in the plans developed by the Design-Build Team, the Design-Build Team shall use Reinforced Concrete Pipe, Corrugated Aluminum Alloy Pipe, Aluminized Corrugated Steel Pipe,

Polypropylene Pipe, Corrugated Polyethylene Pipe (HDPE Pipe) or Polyvinyl-Chloride Pipe (PVC Pipe) in accordance with the following requirements herein.

The appropriate Reinforced Concrete Pipe class and the appropriate gage thickness for Corrugated Aluminum Alloy Pipe Aluminized Corrugated Steel pipe shall be selected based on fill height. All pipe types shall be subject to the maximum and minimum fill height requirements as found on-line at the below:

**[https://connect.ncdot.gov/resources/hydro/Pages/
NCDOT-Pipe-Material-Selection-Guide.aspx](https://connect.ncdot.gov/resources/hydro/Pages/NCDOT-Pipe-Material-Selection-Guide.aspx)**

Site specific conditions may limit a particular material beyond what is identified in this Project Special Provision. These conditions include, but are not limited to, abrasion, environmental, soil resistivity and pH, high ground water and special loading conditions. The Design-Build Team shall determine if additional restrictions are necessary.

Slope drains shall be Corrugated Aluminum Alloy Pipe, Aluminized Corrugated Steel Pipe, Corrugated Polyethylene Pipe (HDPE Pipe) or Polyvinyl-Chloride Pipe (PVC Pipe).

Unless otherwise allowed by the Engineer and included in the plans developed by the Design-Build Team, transverse median drains, storm drainage system pipes, and open-ended cross drains shall be Reinforced Concrete Pipe unless the pipe slope is greater than 10%, in which case the pipe shall be either Corrugated Aluminum Alloy Pipe or Aluminized Corrugated Steel Pipe.

11.15 Subsurface Drainage

Revise the 2024 *Standard Specifications for Roads and Structures* as follows:

Page 8-11, Article 815-1, delete the first sentence and replace with the following:

The Design-Build Team shall construct subsurface drains, underdrains, blind drains and other types of drains where groundwater is within six feet of subgrade.

11.16 Construction Equipment Emissions

11.16.1 Reporting Requirements

During construction, within 60 days after the end of each calendar year, the Contractor shall submit to the Department a list of nonroad diesel-powered construction equipment that was used for construction work for more than 40 hours during that calendar year. Such list shall be submitted each year through the final acceptance of the project. The list shall be submitted on a form supplied by the Department and shall include the following information for each applicable piece of non-road construction equipment:

- equipment type and manufacturer;
- engine manufacturer and model;

- engine model number;
- engine family name and model year;
- engine horsepower or kilowatts;
- engine serial number; and
- engine EPA Tier number.

The submittal shall include the Tier (0, 1, 2, 3 or 4) Nonroad Exhaust Emission Standard that the equipment's engine currently satisfies in accordance with EPA current standards. This list shall be updated and submitted annually.

Failure to provide the equipment list by the timeframe provided above may result in the Department withholding money from the Contractor due for Work performed by that entity in the next partial payment until the necessary assurances are made consistent with this provision.

11.16.2 Minimum Tier Requirements

A minimum of fifty percent (50%) of the reported construction equipment used on the project must meet Tier 4 or Tier 4i requirements.

11.16.3 Incentive

The Department will pay a Fifty Thousand and 0/100 Dollars (\$50,000.00) incentive to the Contractor if, at the conclusion of the project, each calendar year's report reflects that both items below were accomplished:

- (1) More than seventy-five percent (75.0%) of the total number of pieces of applicable construction equipment used on the project meets Tier 4 Final requirements, and
- (2) Less than twenty-five percent (25.0%) of the total number of pieces of applicable construction equipment used on the project is categorized as Tier 0 or 1.

11.16.4 Exclusions

A piece of applicable construction equipment operated by DBE firms (federally funded projects) or MBE/WBE firms (state funded projects) may be excluded from the Reporting Requirements and Minimum Tier Requirements sections above, provided the applicable piece of equipment meets at least the Tier 1 requirements. However, to be eligible for the incentive, the Contractor must include all of these firms' applicable construction equipment in the percentage calculations provided in the Incentive section above.

Regardless of Tier level, cranes are subject to the Reporting Requirements section above. However, any crane may be excluded from the calculations provided under the Minimum Tier Requirements and Incentive sections above, provided that crane meets Tier 1 or higher requirements.

11.17 Critical Path Model

11.17.1 General Requirements

The Design-Build Team shall create a Critical Path Method Project Schedule (CPM Schedule) for each Early Work Package and the Construction Contract unless otherwise waived in the Early Work Package or Construction Contract. The first CPM Schedule need only contain those activities necessary for the first Early Work Package. The CPM Schedule will then evolve to include future Early Work Packages and the Construction Contract as they are executed.

The Design-Build Team shall include in the CPM Schedule, the Work of subcontractors, vendors, suppliers, utilities, railroads, permitting agencies, NCDOT, and all other parties associated with the Work. Failure by the Design-Build Team to include any element of its Work or the Work of others required for project completion shall not excuse the Design-Build Team from completing the project by the applicable Completion Date(s). The Design-Build Team shall provide adequate time in the CPM Schedule for all parties involved with the project to complete their Work, including inspections, procurement activities and testing. The Design-Build Team's plan, as presented in the CPM Schedule, shall adhere to all contract requirements.

The Engineer's acceptance of any CPM Schedule shall not relieve the Design-Build Team of responsibility for the accuracy or feasibility of the CPM Schedule, shall not modify the contract requirements, shall not be construed as an endorsement or validation of the Design-Build Team's plan, and shall not guarantee that the Work can be performed or completed as scheduled. The Engineer's acceptance of the Design-Build Team's CPM Schedules in no way attests to the validity of the assumptions, logic, constraints, dependency, relationships, resource allocations, resource availability, manpower and equipment, or any other aspect of the means and methods of performing the Work. The Design-Build Team is and shall remain solely responsible for the scheduling, planning, and execution of the Work in order to meet the project Milestones, the Intermediate Contract Dates and Times, Substantial Completion Date(s), and the final Completion Date(s).

The Design-Build Team may elect to resource-load their schedule; however, shall not submit a resource leveled CPM Schedule for the purposes of determining start and finish dates or the longest path of the CPM Schedule. Rather, the longest path and start and finish dates shall be determined by logic, durations, and calendars.

Scheduling Software - Unless approved otherwise by the Department, in writing, the Design-Build Team shall produce every schedule referenced in this Article and / or submitted to the Engineer using software that is wholly compatible with the most recent version of Primavera (P6) which has the capability of creating a back-up copy of the working schedule in ".XER" format. Submission of data from another software system where date conversion techniques or software is used to import into Primavera's scheduling software is not acceptable.

Definitions - The following definitions apply solely to the terms used in this Article. The following definitions do not modify in any way the definitions provided elsewhere in the Contract Documents.

Activity - A discrete, identifiable task or event that takes time, has definable start and stop dates, furthers the Work's progress, and can be used to plan, schedule, and monitor a project.

Activity Calendar - A set of working hours and workdays including, non-work days, holidays, special event restrictions, normal adverse weather, seasonal limitations, and environmental restrictions assigned to an activity on which work associated with the activity may be scheduled. Activity Calendars shall be project specific.

Activity Code - Additional information assigned to an activity for purposes of grouping or filtering related activities. Common codes include phase, area, responsibility, subcontractor, type of work, and sub phase.

Activity ID - A unique, alphanumeric, identification code assigned to an activity.

Actual Dates - Actual Starts and Actual Finishes of activities in the schedule.

Actual Finish - The date when the Work represented by a specific activity in the schedule was actually finished.

Actual Start - The date when the Work represented by a specific activity in the schedule was actually started.

Activity Network Diagram - A graphic representation of a CPM Schedule that shows the relationships among activities.

Availability Date – The Contract Date of Availability provided in the relevant Contract Documents.

Bar Chart - A graphic representation of a schedule without relationships. A timescale appears along the horizontal axis.

Baseline Schedule - The first accepted CPM Schedule showing the accepted plan to complete the Work.

CPM of Record - The most recent CPM Schedule accepted by the Engineer.

Calendar Day – A day shown on the calendar beginning and ending at midnight.

Constraint - A restriction imposed in a schedule, which fixes a value that would otherwise be calculated within the schedule. Examples of values that can be fixed by a constraint include float, start date, end date, and completion date.

Contract Time - The number of calendar days inclusive between the Date of Availability and the applicable Completion Date.

Controlling Activity - The first incomplete activity on the Critical Path. This term shall be considered synonymous with “Controlling Operation.”

Critical Delay - A delay to an activity on the critical path that extends the Scheduled Completion Date(s).

Critical Path - The longest path of activities that determines the scheduled project completion date(s). Activities on the critical path are critical activities.

Data Date - The earliest possible date identified in a schedule from which remaining activities can proceed.

Early Finish - The earliest date an activity can finish based on its duration and its predecessors.

Early Start - The earliest date an activity can start based on its predecessors.

Final Schedule - The last monthly updated CPM Schedule containing actual start and finish dates for every activity.

Free Float - The amount of time an activity can be delayed without delaying the early state date of any successor activity.

Lag - An offset of time from the predecessor to the successor. Lag shall be a numerical value that is not assigned a description or activity number.

Late Finish - The latest date an activity can finish based on its successors without causing a delay to the Scheduled Completion Date(s) for the Work.

Late Start - The latest date an activity can start based on its successors and duration without causing a delay to the Scheduled Completion Date(s) for the Work.

Logic - Plural or singular reference to the predecessor and successor relationships between activities in the schedule.

Milestone - An activity with no duration that is typically used to represent the beginning or end of the project or an interim phase. Includes, but is not limited to, Intermediate Completion Dates, Substation Completion Date(s), and the applicable Completion Date(s).

Normal Adverse Weather Impact - A Workday in which the controlling operation(s) is unable to progress as a result of weather or impacts resulting from weather for a period of half or more of the Workday shift duration.

Open End - The condition that exists when an activity has either no predecessor or no successor, or when an activity's only predecessor relationship is a finish-to-finish or only successor relationship is a start-to-start.

Original Duration - The original estimate of time, expressed in workdays, required to perform an activity.

Preceding Work - Work on the project that must be performed by entities under separate contract with the NCDOT prior to work being performed by the Design-Build Team.

Predecessor - An activity that is defined by schedule logic to precede another activity.

Punch Work - Minor corrective work typically performed at the end of construction that is necessary to bring the project into full compliance with the contract requirements.

Relationship - Interdependence between two activities. Relationships link an activity to predecessors and successors.

Remaining Duration - The estimated time, expressed in workdays, required to complete an activity.

Revised Schedule - A Schedule Update with Schedule Revisions.

Scheduled Completion Date(s) - The completion date(s) forecast by the CPM Schedule. The CPM Schedule may also forecast Intermediate Completion Dates for Milestones, phases, or other portions of the project.

Schedule Representative – An individual with documented CPM scheduling experience in

developing, updating, and revising CPM Schedules on projects of similar size, scope, complexity and having a thorough understanding of the project scope, Contract, plans, and associated project phasing and milestones.

Schedule Revision(s) - A change in calendars, along with adding / deleting activities, the method of calculation, relationships, sequence, or original duration of activities in the schedule; or a change in the remaining duration of a work activity that is not caused by the actual progress of the activity. Revisions can be considered either Major or Minor as noted in Section F below.

Schedule Update - A CPM Schedule produced by the Design-Build Team and provided to the Engineer on regular intervals, not to exceed once per month by incorporating the project's actual progress into the CPM of Record prior to any major schedule revisions.

Successor - An activity that is defined by schedule logic to succeed another activity.

Total Float - The amount of time an activity can be delayed without affecting the project's completion date(s) or an intermediate deadline (constraint); it is the difference between the late finish date and the early finish date.

Workday - calendar day during which construction operations are expected to proceed, normally excluding weekends, holidays, and other non-working periods.

11.17.2 Design-Build Team's Schedule Representative

The Design-Build Team shall identify to the Engineer the person to serve as the Schedule Representative responsible for developing, updating, and revising the Design-Build Team's CPM Schedule. The identified Schedule Representative's qualifications shall be submitted to the Engineer for evaluation. The Engineer may reject a Scheduling Representative that does not meet the minimum requirements of this Article. In such case, the Design-Build Team must designate another individual meeting the minimum requirements for a Schedule Representative prior to the acceptance of the initial Baseline Schedule. The Design-Build Team shall use the same Schedule Representative for the duration of the project unless submitted and approved by the Department in writing. If the accepted Schedule Representative is no longer assigned to the project, the Design-Build Team shall submit a new Schedule Representative for the Engineer's review within 14 days of receiving notice of the Schedule Representative's departure.

The Design-Build Team shall authorize the Schedule Representative to update and submit schedules, answer schedule-related questions, and propose revisions to the schedule as necessary to present a current and reliable plan of construction. The Schedule Representative shall be authorized to speak on behalf of the Design-Build Team in matters related to scheduling of the Work. The Schedule Representative shall attend scheduling and progress meetings including, but not limited to, the Design-Build Team's schedule meetings with subcontractors, vendors, utility companies, or other government agencies.

11.17.3 Preliminary Critical Path Method Schedule for Project

No later than 21 days after the execution of the first Early Work Package, the Design-Build Team shall develop and submit a Preliminary CPM Schedule for the remainder of the project, to include the anticipated construction start and finish dates for the remaining Early Work Packages and the

Construction Contract.

The intent of the Preliminary CPM Schedule is for all parties' use in estimating project sequencing and timing of future scoping and pricing reconciliation, and ultimately project duration.

The work activities may be broad (e.g. Structure #3 construction or Earthwork Phase 2). The Preliminary CPM Schedule shall include all Milestone events as may be specified by the Department.

The Preliminary CPM shall be updated at minimum every two months until such time that the Baseline CPM for the final Construction Contract is developed. With each Preliminary CPM Schedule Update, the Design-Build Team shall incorporate information gained during design progression, risk assessments, innovation savings, and Early Work Package implementation/progression.

11.17.4 Baseline Critical Path Method Schedule

Concurrent with the establishment of a Construction Agreed Price (CAP) for the Work, the Design-Build Team shall submit electronically to the Engineer a Baseline Critical Path Method Project Schedule (Baseline Schedule) meeting the requirements of this Article, and using industry-accepted CPM scheduling practices as identified in the AGC's Construction Planning and Scheduling book, Second Edition. The Baseline Schedule shall be approved before any payments are processed for the Work.

The review process, CPM content requirements, and narrative content requirements of this Section (D) also apply to a Schedule Update that first introduces the second Early Work Package, any future early Work Package, and the Construction Contract.

Upon submission of the Baseline Schedule, the Engineer and Design-Build Team will attend a scheduling conference to discuss the Design-Build Teams overall plan to accomplish the Work, their CPM Schedule structure, and address any outstanding scheduling questions. Within 21 days of receipt of the Design-Build Team's Baseline Schedule, the Engineer will complete the review. If the Engineer decides it is warranted, the Engineer will convene additional joint review conferences at which the Engineer and the Design-Build Team shall make any necessary corrections or adjustments to the Baseline Schedule. If a revision is necessary either from the Engineer's review or the joint review conference(s), the Design-Build Team shall submit a revised Baseline Schedule electronically within seven days of such joint review conference and the Engineer will review the revised Baseline Schedule within seven days of re-submittal. The Design-Build Team and the Engineer shall repeat this process until an acceptable Baseline Schedule is established.

Once accepted, the Baseline Schedule becomes the first CPM of Record for the project.

The Design-Build Team shall submit a Baseline Schedule that meets the following requirements.

- (1) The first activity in the schedule shall be the "Availability Date." The Design-Build Team shall constrain this activity to start on the contract Date of Availability identified elsewhere in the relevant Contract Document. Except as indicated otherwise elsewhere

in this Article or agreed in writing by the Engineer, the Design-Build Team shall not use constraints.

- (2) The Last Activity in the Schedule shall be identified as “Early Work Package Completion” or “Project Completion.” The Design-Build Team shall plan the other activities in the schedule so that the expected finish of “Early Work Package Completion” or “Project Completion” is constrained to occur on or before the Intermediate Contract Date or Completion Date contained in the relevant Contract Document.
- (3) The Design-Build Team shall plan its work to meet all time-related contract requirements. This includes but is not limited to submittal review times, Milestones, Intermediate Contract Dates and Times, Substantial Completion Date(s), phasing requirements, and the date of completion, as appropriate.
- (4) The Design-Build Team shall identify all the components of the Work and the Work of others on the project as activities in the Baseline Schedule.
- (5) The Design-Build Team shall designate the following for each activity in the Baseline Schedule, including:
 - (a) A unique alpha numeric activity ID
 - (b) A description of the Work associated with each activity ID
 - (c) A duration
 - i. The Design-Build Team shall limit construction activities to a maximum duration of 22 workdays. The Design-Build Team shall subdivide activities expected to take longer than 22 days so as to provide more detail and to meet this requirement. If for any reason this requirement cannot be achieved, the Design-Build Team shall provide a written request to the Engineer, explaining the reasoning for the need to have a duration over 22 workdays. Any duration provided by the Department, utilities, or other government agencies shall be exempt from this requirement. Waiting times for plant growth, cure times, material procurement, and no assignment of responsibility are also exempt from this requirement.
 - ii. The Design-Build Team shall limit design activities to the required design submittal intervals or a maximum of 90 days, whichever is shorter. The Design-Build Team shall subdivide activities expected to take longer so as to provide more detail.
 - (d) Predecessors - Each activity except for “Availability Date” shall have at least one predecessor.
 - (e) Successors - Each activity except for “Final Completion” shall have at least one successor.
 - (f) Activity Calendar - The Activity Calendar shall clearly identify the days when work could be performed on the activity and the days when work cannot be performed on the activity, in addition to the number of hours per day for a given work week. Normal adverse weather days shall be included as non-workdays in specific work

type calendars. Weather shall not be accounted for in activity durations.

- (g) Activity Code - Each activity in the schedule shall be assigned an activity code for the following categories:

- i. Area of the Project
- ii. Structure within the Area of the Project
- iii. Phase of the Project
- iv. Division of Work
- v. Work Type
- vi. Responsibility for the Work

- The Design-Build Team shall identify the entity responsible to perform each activity in the Baseline Schedule. Examples might include a particular subcontractor, the Department, the Design-Build Team, a government agency, a utility company, etc.
- If more than one entity is performing a particular activity, then the activity code shall identify both entities.
- When the Baseline Schedule is submitted, the Design-Build Team shall provide a list to the Engineer of each activity code that assigns responsibility to entities that are not under the control of the Design-Build Team.

- vii. Categories and Groupings

- The Design-Build Team shall assign different categories for items in separate Divisions within the *Standard Specifications for Roads and Structures* and at least one type of work shall be classified as punch work.
- The Design-Build Team shall choose a method of identifying the type of work that shall clearly communicate to the Engineer the nature of the work being performed.

- (6) The Design-Build Team shall assign each activity in the Baseline Schedule at least one predecessor and one successor, except the first activity, “Availability Date” and the last activity, “Project Completion.”
- (7) The Design-Build Team shall not use start-to-finish relationships to connect predecessor and successor activities.
- (8) The Design-Build Team shall limit the use of start-to-start and finish-to-finish relationships to connect predecessor and successor activities. The Schedule Representative shall explain to the Engineer why a start-to-start or finish-to-finish relationship was used upon the Engineer’s request.
- (9) The Design-Build Team shall produce a Baseline Schedule that does not contain open-ended activities, except for the first and last activity in the schedule.
- (10) The Design-Build Team shall not use negative lags in the Baseline Schedule. The Design-Build Team shall limit the use of lags in the Baseline Schedule and shall not use a lag greater than five days unless approved otherwise by the Engineer. The Schedule

Representative shall explain to the Engineer why a lag was used.

- (11) The Design-Build Team shall use scheduling software that adheres to the requirements found elsewhere in this Article to calculate the following data for each activity in the Baseline Schedule:
 - (a) Early Start
 - (b) Early Finish
 - (c) Late Start
 - (d) Late Finish
 - (e) Total Float
 - (f) Free Float
- (12) The longest path shall be dictated by schedule logic, durations, and calendar days, not by the leveling of resources.
- (13) The Design-Build Team shall submit a written narrative with the Baseline Schedule that explains:
 - i. The planned Work sequence, including proposed phasing and maintenance of traffic
 - ii. The critical path and near critical activities,
 - iii. Activity calendars to include working hours and workdays including, non-workdays, holidays, special event restrictions, normal adverse weather, seasonal limitations, and environmental restrictions assigned to the activities,
 - iv. Milestone dates,
 - v. Procurement of materials,
 - vi. Permitting and environmental requirements,
 - vii. Coordination with other contractors,
 - viii. Coordination with local municipalities,
 - ix. Work to be performed by the Department, other government agencies, utility companies or other entities, and
 - x. Any other scheduling assumptions made by the Design-Build Team.

The Engineer will review the Baseline Schedule submitted by the Design-Build Team for compliance with the contract requirements. The Engineer may reject the Baseline Schedule if it does not adhere to the contract requirements or if it makes unreasonable demands on the Department or third parties on the project without their written acknowledgement or agreement to such demands or requirements. Examples of unreasonable demands might include, but are not limited to, the simultaneous review of numerous submittals, short durations for utilities to perform work, shutting down adjacent roadways, or limiting access to private landowners. The Engineer may reject a schedule that over-utilizes start-to-start and finish-to-finish relationships to connect predecessor and successor activities if, in the opinion of the Engineer, the use of these logic relationships obscures the relationships between activities. The Engineer may reject a schedule that over-utilizes lags, if in the opinion of the Engineer, lags are being used to replace necessary activities, consume available float, or obscuring how one activity relates to the next.

Use of float suppression techniques, such as preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), special lead/lag logic restraints, zero total or free float constraints, extended activity times, or imposing constraint dates other than as required by the contract, shall be cause for rejection of the Baseline Schedule. The Design-Build Team shall not group, summarize, or otherwise combine activities in a manner that obscures logical relationships, conceals activity sequencing, or fails to accurately represent the flow of work and the resulting critical path. For example, grouping of Right of Way parcels, utility relocations or utility owners' individual responsibilities.

The Design-Build Team shall be responsible for the timely preparation of a Baseline Schedule that fully complies with the requirements of this Article and the contract. The Engineer may take action under Articles 108-7 of the *Standard Specifications* if the Design-Build Team has not prepared an acceptable Baseline Schedule prior to the start of construction.

11.17.5 Schedule Updates

The Design-Build Team and Engineer will determine a mutually agreeable Data Date for the Schedule Updates concurrent with each partial payment application. The Design-Build Team shall submit electronically to the Engineer a Schedule Update to the CPM of Record using accepted *scheduling* practices. The Design-Build Team shall continue to provide the Engineer Schedule Updates until the final schedule is approved with 100% completion of all activities and all the Work. The Engineer shall review the Schedule Update and provide a response to the Design-Build Team within seven calendar days of the submission. Upon the Engineer's acceptance, the Schedule Update shall become the new CPM of Record, replacing the previous CPM of Record, and shall be considered used from its Data Date until the Data Date of the next schedule accepted by the Engineer.

A Schedule Update will also be required to append the second Early Work Package, any future early Work Package, and the Construction Contract to the current CPM of Record, although that appended portion of the Schedule Update will be subject to the requirements under Section (D) above.

The Design-Build Team shall incorporate the following information into the previous CPM of Record and submit this as its Schedule Update:

- (1) An updated Data Date
- (2) The actual start of any activity that started prior to the Data Date of the Schedule Update
- (3) The actual finish of any activity that finished prior to the Data Date of the Schedule Update
- (4) The new remaining duration of any activity that began, but did not finish prior to the Data Date of the Schedule Update.
- (5) The percent complete for every activity in the CPM Schedule, these percentages should reflect the line item quantities from the associated partial payment. The Design-Build Team shall use both activity percent complete and resource percent complete for activities representing the purchase of materials and shall identify the resource percent complete of activities representing the purchase of materials for undelivered; delivered

or fabricated; or installed material as 0%, 95% or 100% complete, respectively.

- (6) The Design-Build Team shall use scheduling software to calculate the following data for each of the remaining activities in the Schedule Update:
- a. Early Start
 - b. Early Finish
 - c. Late Start
 - d. Late Finish
 - e. Total Float
 - f. Free Float

The Design-Build Team shall provide a narrative as part of the Schedule Update. The Design-Build Team shall include the following in the Schedule Update narrative:

- (1) A description of the Work performed during the update period and any deviations from the Work scheduled.
- (2) If progress is falling behind, a description of the reasons and any actions taken or proposed to mitigate.
- (3) The status of any outstanding permits.
- (4) The current Critical Path and near critical Activities.
- (5) Any delays or disruptions to project milestone dates experienced during the update period, such as, Intermediate Contract Dates, Substantial Completion Date(s) and / or Final Completion Date
- (6) If a milestone activity is scheduled to occur later than the date specified in the relevant Contract Document, an explanation stating why the milestone date is scheduled to occur late and any actions taken or proposed to mitigate.
- (7) A list of the Controlling Operation Workdays delayed due to adverse weather during the current update period including a description and start/finish times of the weather event; critical activities affected, how the activities were affected, and the duration of the impact. Also, a description of any actions taken or proposed to mitigate.
- (8) Any significant changes in planned manpower or equipment
- (9) Any foreseeable conflicts, delays or disruptions
- (10) Any “Minor Revisions” made during the update period.
- (11) Work planned for the next update period and any actions needed by the Department, Utility Owners, or other parties.
- (12) Any other factors that have or may impact the project schedule.

A discussion of delays in the Schedule Update’s narrative shall not constitute a written request for additional time or notice of intent to file a claim as required by the Contract.

The Design-Build Team shall not incorporate any revisions into a Schedule Update unless the revisions are minor. The Schedule Update narrative shall include documentation of any revisions previously approved by the Engineer.

If the Design-Build Team chooses to revise the CPM of Record, the revised schedule shall be submitted separately from and within seven calendar days of the Schedule Update. The revised CPM of Record shall have the same Data Date as the most recent CPM of Record and reflect the progress achieved up to that point in time.

The Engineer will review the Schedule Update submitted by the Design-Build Team for compliance with the contract requirements. Use of float suppression techniques, such as preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), special lead/lag logic restraints, zero total or free float constraints, extended activity times, or imposing constraint dates other than as required by the contract, shall be cause for rejection of the Schedule Update. The use of Resource Leveling (or similar software features) used for the purpose of artificially adjusting activity durations to consume float and influence the critical path is expressly prohibited. The Engineer may reject the Schedule Update if it does not adhere to these or any other contract requirements, including a Schedule Update that 1) incorporates “Major Revisions”, 2) includes actual dates on or after the Data Date, and / or 3) records incomplete or incorrect information on the work progress.

Additionally, the Engineer will review the alleged Controlling Operation Workdays delayed due to adverse weather during the current Schedule Update period, determine the actual number of Controlling Operation Workdays delayed, and document the adverse weather delay. The Design-Build Team will have 10 days to dispute the Engineer’s findings. After this 10-day dispute period, the decision will be final. The Design-Build Team’s failure to submit normal adverse weather delays during a Schedule Update will be construed as zero weather delays encountered during that Schedule Update period. The collective sum of the Schedule Update’s weather delays, as determined by the Engineer, will be utilized to determine any time extension provided per Article 108-10(B) as may be modified in Section 15 of this Master Agreement.

11.17.6 Revisions to the CPM of Record

In accordance with the requirements of this Article, the Design-Build Team shall revise the CPM of Record. With prior approval from the Engineer, the Design-Build Team may revise the CPM of Record for other circumstances.

A minor revision shall be defined as a revision that does not affect the critical path of the Work on the project, does not affect work activities that may soon become critical, does not significantly affect third parties, does not significantly affect the Department. The Design-Build Team shall incorporate minor revisions into the next Schedule Update and include a summary of these changes in the narrative.

The creation of a new Baseline CPM that appends the Work of a future Early Work Package to the CPM of Record for the first Early Work Package shall not be used to make revisions to the CPM of Record for the first Early Work Package until such time that the new Baseline CPM of Record is approved.

All revisions that are not minor revisions shall be defined as major revisions. The Engineer’s determination as to whether a revision is minor or major shall be final. For major revisions, the Design-Build Team shall submit to the Engineer a Revised Schedule that meets all the requirements of the Baseline Schedule and is updated to reflect current progress. The Design-Build Team shall submit all Revised Schedules within seven days of its Data Date unless otherwise agreed by the

Engineer, in writing. The Design-Build Team shall include a narrative with the Revised Schedule describing each revision and the reason for each revision. Every revision that was made to the Revised Schedule shall be listed in the narrative. The Design-Build Team shall include in the narrative any delays or potential delays identified in the Revised Schedule along with options to mitigate the delays or potential delays. The Design-Build Team shall also include in the narrative any foreseeable problems that may need to be overcome when implementing the Revised Schedule. A discussion of delays and potential delays in the Revised Schedule narrative shall not constitute a written request for additional time, per Article 108-10 as may be amended in Section 15 of this Master Agreement, or satisfy any requirement for written notice to file a claim as required by the contract, per Article 104-8(B) as may be amended in Section 15 of this Master Agreement.

Within seven calendar days of submittal, the Engineer shall accept or reject proposed Revised Schedule(s). Upon the Engineer's acceptance, the Revised Schedule shall become the CPM of Record and shall be used from its Data Date until the Data Date of the next Revised Schedule or Schedule Update accepted by the Engineer.

The Engineer will accept Revised Schedules that appear to accurately reflect the Design-Build Team's current plan for completing the Work on the project. The Engineer may accept a Revised Schedule that indicates the project is currently expected to finish earlier or later than required by the contract. However, the Engineer's acceptance of the Design-Build Teams' schedules does not relieve the Design-Build Team from its obligations to perform under the contract terms including but not limited to completion of the Work within the contract time; or as granting, rejecting, or in any way acting on the Design-Build Team's requests for adjustment to the date(s) for completion of the Work.

The Engineer may reject any CPM Schedule revision that 1) does not, in the opinion of the Engineer, accurately reflect the Design-Build Team's current plan of construction; 2) requires additional and / or revised actions on the part of third parties or the Department; 3) submitted more than seven calendar days after its Data Date, unless the Engineer had previously agreed to waive this requirement.

11.17.7 Use of the CPM of Record to Assess Project Delays

If the Design-Build Team submits a written request for an extension to the contract time in accordance with Article 108-10 as may be modified in Section 15 of this Master Agreement, the Engineer will rely upon the CPM of Record in effect at the time the delay is recognized or occurs, whichever is sooner, to assess the effects of changes and revisions or other potential causes of delay to the Scheduled Completion Date(s).

For purposes of calculating and withholding anticipated liquidated damages, as identified in the Standard *Specifications for Roads and Structures*, and as may be amended in Section 15 of this Master Agreement, the Engineer will rely on the Scheduled Completion Date(s) identified in the CPM of Record.

11.17.8 Measurement and Payment

The Department will not pay additional costs for any revisions to the CPM Schedule regardless of

what condition or change prompted the revision(s). The cost to create, revise, and update the CPM Schedule shall be an administrative requirement included as part of the Design-Build Team's lump sum bid for the entire project. The Design-Build Team shall allocate sufficient resources to timely administer the CPM Schedule, including but not limited to all revisions, as required.

11.18 Errata – Standard Specifications

Revise the 2024 NCDOT *Standard Specifications for Roads and Structures* as follows:

Division 3

Page 3-5, Article 305-2 MATERIALS, after line 16, replace " 1032-3(A)(7)" with "1032-3" and add the item "Galvanized Corrugated Steel Pipe" with Section "1032-3".

Page 3-6, Article 310-2 MATERIALS, after line 9, add the item "Galvanized Corrugated Steel Pipe" with Section "1032-3".

Division 6

Page 6-15, Article 610-1 DESCRIPTION, line 20, replace "The work includes" with "The work includes, but is not limited to,".

Page 6-15, Article 610-1 DESCRIPTION, line 22, replace "applying the tack coat as specified." with "applying the tack coat in accordance with Section 605.".

Page 6-30, Article 610-14 DENSITY ACCEPTANCE, line 39, replace "QC process." with "QC process in accordance with Section 609.".

Page 6-50, Subarticle 661-4(A) Equipment, lines 4-7, replace the first two sentences of the seventh paragraph with the following:

When an erected fixed stringline is utilized for longitudinal profile and cross slope control furnish and erect the necessary guideline for the equipment.

Division 8

Page 8-27, Article 846-1 DESCRIPTION, line 8, delete "4 inch" from the first paragraph.

Division 9

Page 9-17, Article 904-4 MEASUREMENT AND PAYMENT, prior to line 1, replace " Sign Erection, Relocate Type (Ground Mounted)" with "Sign Erection, Relocate Type ____ (Ground Mounted)".

Division 10

Page 10-51, Article 1024-4 WATER, prior to line 1, delete the “unpopulated blank row” in Table 1024-2 between “Time of set, deviation from control” and “Chloride Ion Content, Max.”.

Page 10-170, Subarticle 1081-1(C) Requirements, line 4, replace "maximum" with “minimum”.

Division 11

Page 11-15, Article 1160-4 MEASUREMENT AND PAYMENT, line 24, replace “Where barrier units are moved more than one” with “Where barrier units are moved more than once”.

Division 15

Page 15-10, Article 1515-4 MEASUREMENT AND PAYMENT, lines 11, replace " All piping" with “All labor, the manhole, other materials, excavation, backfilling, piping”.

Division 16

Page 16-3, Article 1609-2 MATERIALS, after line 26, replace "Type 4" with “Type 4a”.

Page 16-14, Article 1633-5 MEASUREMENT AND PAYMENT, line 20-24 and prior to line 25, delete and replace with the following " Flocculant will be measured and paid in accordance with Article 1642-5 applied to the temporary rock silt checks.”

Page 16-25, Article 1644-2 MATERIALS, after line 22, replace "Type 4" with “Type 4a”.

SECTION 12 – BOND REQUIREMENTS

12.1 Surety Guarantee

Prior to the execution of the Master Agreement, the Design-Build Team must provide evidence of its bonding capacity in the form of a surety letter. The surety letter must affirm that the Design-Build Team can obtain payment and performance bonds in the amount of \$350,000,000 (Three-Hundred Fifty Million dollars).

The corporate surety furnishing the surety letter shall be authorized to do business in the State.

12.2 Performance and Payment Bonds

Ultimately, Payment and Performance bonds for 100% of the Construction Agreed Price (or GMP) for the Project will be required in accordance with Article 103-7 of the Standard Specifications, this Master Agreement, and applicable law.

However, in the event of one or more Early Work Packages, the Payment and Performance Bonds may first be in the amount of 100% of the price of the Early Work Package. Upon execution of subsequent Contract Documents, the Payment and Performance bonds must be supplemented with additional bonds, replaced with new bonds or otherwise adjusted by rider to be in the amount of 100% of the aggregate total price of all previously executed Contract Documents plus the price of the pending Contract Document.

Applicable Payment and Performance Bond Forms may be found on the NCDOT website at:

<https://connect.ncdot.gov/letting/Pages/Central-Letting-Forms.aspx>

The corporate surety furnishing the bonds shall be authorized to do business in the State.

12.3 Payment Bond for Preconstruction Phase

A payment bond in the amount of one hundred percent (100%) of the amount specified with the Preconstruction Agreement will be required prior to the execution of the Preconstruction Agreement, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which the prime contractor, is liable. This requirement may be waived if so requested by all parties intending to perform work under the applicable Preconstruction Agreement.

The corporate surety furnishing the bonds shall be authorized to do business in the State.

SECTION 13 – DISADVANTAGED BUSINESS ENTERPRISES

13.1 Description

The purpose of this special provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

13.2 Definitions

Additional DBE Subcontractors - Any DBE submitted at the time that the Construction Contract, Early Work Package, or amendment thereto is executed that will not be used to meet the DBE goal. No submittal of a Letter of Intent is required.

Committed DBE Subcontractor - Any DBE submitted at the time the Construction Contract, Early Work Package, or amendment thereto is executed that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

Contract Goal Requirement - The approved DBE participation at time of Construction Contract, Early Work Package, or amendment thereto is executed, but not greater than the advertised contract goal.

DBE Goal - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

Disadvantaged Business Enterprise (DBE) - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

Goal Confirmation Letter - Written documentation from the Department to the Design-Build Team confirming the Design-Build Team's approved, committed DBE participation along with a listing of the committed DBE firms.

Manufacturer - A firm that owns (or leases) and operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Design-Build Team. A firm that makes minor modifications to the materials, supplies, articles, or equipment is not a manufacturer.

Regular Dealer - A firm that owns (or leases) and operates a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in sufficient quantities, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, concrete or concrete products, gravel, stone, asphalt, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Any supplement of regular

dealers' own distribution equipment shall be by a long-term operating lease and not on an ad hoc or contract-by-contract basis.

Distributor - A firm that engages in the regular sale or lease of the items specified by the contract. A distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g. a manufacturer's facility) making it liable for any loss or damage not covered by the carrier's insurance.

Replacement / Substitution - A full or partial reduction in the amount of work subcontracted to a committed (or an approved substitute) DBE firm.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

13.3 Forms and Websites Referenced in this Provision

DBE Payment Tracking System - On-line system in which the Design-Build Team enters the payments made to DBE subcontractors who have performed work on the project.

<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

DBE-IS Subcontractor Payment Information - Form for reporting the payments made to all DBE firms working on the project. This form is for paper bid projects only.

<https://connect.ncdot.gov/business/Turnpike/Documents/Form%20DBE-IS%20Subcontractor%20Payment%20Information.pdf>

RF-1 DBE Replacement Request Form - Form for replacing a committed DBE.

<http://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Form%20and%20Instructions.pdf>

SAF Subcontract Approval Form - Form required for approval to sublet the contract.

<http://connect.ncdot.gov/projects/construction/Construction%20Forms/SAF%20-%20Subcontract%20Approval%20Form%20Revised%2004-19.xslm>

JC-1 Joint Check Notification Form - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.

<http://connect.ncdot.gov/projects/construction/Construction%20Forms/Joint%20Check%20Notification%20Form.pdf>

Letter of Intent - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the estimated amount (based on quantities and unit prices) listed at the time Construction Contract, Early Work Package, or amendment thereto is executed.

<http://connect.ncdot.gov/letting/LetCentral/Letter%20of%20Intent%20to%20Perform%20as%20a%20Subcontractor.pdf>

Listing of DBE Subcontractors Form - Form for entering DBE subcontractors on a project that will meet this DBE goal contained elsewhere in this Master Agreement. This form is for paper bids only.

[http://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content%208%20DBE%20Subcontractors%20\(Federal\).docx](http://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content%208%20DBE%20Subcontractors%20(Federal).docx)

Subcontractor Quote Comparison Sheet - Spreadsheet for showing all subcontractor quotes in the work areas where DBEs quoted on the project. This sheet is submitted with good faith effort packages.

<http://connect.ncdot.gov/business/SmallBusiness/Documents/DBE%20Subcontractor%20Quote%20Comparison%20Example.xls>

DBE Regular Dealer/Distributor Affirmation Form – Form is used to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively of the cost of materials or supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 49 CFR 26.55 under the contract at issue. A Contractor will submit the completed form with the Letter of Intent.

<https://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20Regular%20Dealer-Distributor%20Affirmation%20Form%20-%20USDOT%202024.pdf>

13.4 DBE Goal

There is NO goal for participation by Disadvantaged Business Enterprises for this contract.

- (A) *If the DBE goal is more than zero*, the Design-Build Team shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percent of the contract as set forth above as the DBE goal.
- (B) *If the DBE goal is zero*, the Design-Build Team shall make an effort to recruit and use DBEs during the performance of the contract. Any DBE participation obtained shall be reported to the Department.

13.5 Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the Department and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link.

<https://www.ebs.nc.gov/VendorDirectory/default.html>

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

13.6 DBE Participation Plan

The Design-Build Team shall prepare a plan for achieving the above goal. At a minimum, the plan shall include the following items:

- (A) Staff assigned to solicit participation and document all efforts related to DBE utilization on this contract, including but not limited to, outreach and good faith efforts, training, tracking and submission of monthly reports, and coordinating with the Department on replacement requests.
- (B) A detailed outreach plan, initially submitted for the entire project, and updated as each work package is submitted.
- (C) A list of work anticipated to be self-performed.
- (D) A list of work anticipated to be subcontracted.
- (E) Identify subcontract work that is likely to be performed by the DBE.
- (F) Identify opportunities in other areas such as material suppliers, manufacturers, or support services.

13.7 Listing of DBE Subcontractors

At the time of bid for each work package, submit a list of DBE participation, including the names and addresses on Listing of DBE Subcontractors contained elsewhere in the contract documents. The Contractor shall indicate the following required information:

- (1) Submit the names and addresses of DBE firms identified to participate in the contract (see Appendix G of this Master Agreement for form).
- (2) Submit the contract line numbers and quantity of work to be performed by each DBE firm.
- (3) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms.
- (4) The bidder shall submit written documentation for each DBE that will be used to meet the DBE Goal of the contract, indicating the bidder's commitment to use the DBE in the contract. This documentation shall be submitted on the Department's form titled Letter of Intent.

A second *Listing of DBE Subcontractors* form shall also be maintained listing the DBE participation to date over the life of the Master Agreement. The Design-Build Team shall indicate the total dollar value of the DBE participation for the contract.

13.8 DBE Prime Contractor

When a certified DBE firm proposes on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other Design-Build Team. In most cases, a DBE Design-Build Team on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE Design-Build Team and any other DBE subcontractors will count toward the DBE goal. The DBE Design-Build Team shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE Design-Build Team will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections A and B listed under *Listing of DBE Subcontractor* just as a non-DBE Design-Build Team would.

13.9 Written Documentation - Letter of Intent

The Design-Build Team shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the Design-Build Team's commitment to use the DBE in the contract. This documentation shall be submitted on the Department's form titled *Letter of Intent* before the applicable Contract Document can be executed.

The documentation shall be received in the office of the State Contractor Utilization Engineer or at DBE@ncdot.gov no later than seven days prior to the execution of the relevant Contract Document, unless the seventh day prior falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than eight days prior to the execution of the relevant Contract Document.

If the Design-Build Team fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (e.g., both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the DBE goal, the Design-Build Team shall submit evidence of good faith efforts, completed in its entirety, to the State Contractor Utilization Engineer or DBE@ncdot.gov no later than four days prior to the execution of the relevant Contract Document, unless the fourth day prior falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than five days prior to the execution of the relevant Contract Document.

13.10 Submission of Good Faith Effort

If at any time the Department feels that the overall DBE contract goal may not be met, either through inadequate progress toward the goal as represented on the cumulative *Listing of DBE Subcontractors* or for any other reason, the Department may request the Design-Build Team to

submit to the Department documentation of adequate good faith efforts made to reach the DBE goal.

A hard copy and an electronic copy of this information shall be received in the office of the State Contractor Utilization Engineer or at DBE@ncdot.gov no later than 14 days after written request by the Department. If the Design-Build Team cannot send the information electronically, then one complete set and five copies of this information shall be received under the same time constraints above.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

13.11 Consideration of Good Faith Effort for Projects with DBE Goals More Than Zero

Adequate good faith efforts mean that the Design-Build Team took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE participation. Adequate good faith efforts also mean that the Design-Build Team actively and aggressively sought DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

The Department will consider the quality, quantity, and intensity of the different kinds of efforts a Design-Build Team has made. Listed below are examples of the types of actions a Design-Build Team will take in making a good faith effort to meet the goal and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

- (A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, written notices, use of verifiable electronic means through the use of the NCDOT Directory of Transportation Firms) the interest of all certified DBEs who have the capability to perform the work of the contract. The Design-Build Team must solicit this interest within at least ten days prior to the execution of the relevant Contract Document to allow the DBEs to respond to the solicitation. Solicitation shall provide the opportunity to DBEs within the Division and surrounding Divisions where the project is located. The Design-Build Team must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- (B) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved.
 - (1) Where appropriate, break out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - (2) Negotiate with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation (2nd and 3rd tier subcontractors).

- (C) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (D)
 - (1) Negotiating in good faith with interested DBEs. It is the Design-Build Team's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - (2) A Design-Build Team using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Design-Build Team's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a Prime Contractor to perform the work of a contract with its own organization does not relieve the Design-Build Team of the responsibility to make good faith efforts. Proposing Design-Build Teams are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (E) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Design-Build Team's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Design-Build Team's efforts to meet the project goal.
- (F) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Design-Build Team.
- (G) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (H) Effectively using the services of available minority / women community organizations; minority / women contractors' groups; Federal, State, and local minority / women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. Contact within thirty days from the execution of the relevant Contract Document the Business Opportunity and Work Force Development Unit at BOWD@ncdot.gov to give notification of the Design-Build Team's inability to get DBE quotes.

- (I) Any other evidence that the Design-Build Team submits which shows that the Design-Build Team has made reasonable good faith efforts to meet the DBE goal.

In addition, the Department may take into account the following:

- (1) Whether the Design-Build Team's documentation reflects a clear and realistic plan for achieving the DBE goal.
- (2) The Design-Build Team's past performance in meeting the DBE goals.
- (3) The performance of other Design-Build Teams in meeting the DBE goal. For example, when the Design-Build Team fails to meet the DBE goal, but others meet it in similar projects in the same geographic area, you may reasonably raise the question of whether, with additional reasonable efforts the Design-Build Team could have met the goal. If the Design-Build Team fails to meet the DBE goal, but meets or exceeds the average DBE participation obtained by other Design-Build Teams, the Department may view this, in conjunction with other factors, as evidence of the Design-Build Team having made a good faith effort.

If the Department does not award the applicable Contract Document, then other work under this Master Agreement may be suspended at no additional cost to the Department, or the work under the applicable Contract Document may be readvertised at a later date.

13.12 Non-Good Faith Appeal

The State Prequalification Engineer will notify the Design-Build Team verbally and in writing of non-good faith. A Design-Build Team may appeal a determination of non-good faith made by the Goal Compliance Committee. If a Design-Build Team wishes to appeal the determination made by the Committee, they shall provide written notification to the State Prequalification Engineer. The appeal shall be made within two business days of notification of the determination of non-good faith.

13.13 Counting DBE Participation Toward Meeting DBE Goal

- (A) Participation

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed DBE will be based upon the value of work performed by the DBE and the actual payments to DBE firms by the Design-Build Team.

- (B) Joint Checks

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through

submission of Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the Department's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department. The Department's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

(D) Joint Venture

When a DBE performs as a participant in a joint venture, the Design-Build Team may count toward its contract goal requirement a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

(E) Manufacturers, Regular Dealers, Distributors

The Design-Build Team may count toward its DBE requirement 40 percent of its expenditures for materials or supplies (including transportation costs) from a DBE distributor, 60 percent of its expenditures for materials or supplies (including transportation costs) from a DBE regular dealer and 100 percent of such expenditures obtained from a DBE manufacturer.

A Design-Build Team may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers or distributors:

- (1) The fees or commissions charged by a DBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- (2) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer, regular dealer, nor a distributor count the entire amount of fees or commissions charged that the Department deems to be reasonable, including transportation charges for the delivery of materials or supplies. Do not count any portion of the cost of the materials and supplies themselves.

A Contractor will submit a completed *DBE Regular Dealer/Distributor Affirmation Form* with the Letter of Intent to the State Contractor Utilization Engineer or DBE@ncdot.gov. The State Contractor Utilization Engineer will make a preliminary assessment as to whether a DBE supplier has the demonstrated capacity to perform a commercially useful function (CUF) on a contract-by-contract basis *prior* to its participation.

13.14 Commercially Useful Function

(A) DBE Utilization

The Design-Build Team may count toward its contract goal requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function:

- (1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.
- (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.
- (5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the

non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Design-Build Team will not count towards the DBE contract requirement.

- (6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.
- (7) Subcontracted / leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted / leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

13.15 DBE Replacement

When a Design-Build Team has relied on a commitment to a DBE subcontractor (or an approved substitute DBE subcontractor) to meet all or part of a contract goal requirement, the Design-Build Team shall not terminate the DBE subcontractor or any portion of its work for convenience. This includes, but is not limited to, instances in which the Design-Build Team seeks to perform the work of the terminated subcontractor with another DBE subcontractor, a non-DBE subcontractor, or with the Contractor's own forces or those of an affiliate.

The Design-Build Team must give notice in writing both by certified mail and e-mail to the DBE subcontractor, with a copy to the Engineer of its intent to request to terminate a DBE subcontractor or any portion of its work, and the reason for the request. The Design-Build Team must give the DBE subcontractor five (5) business days to respond to the Design-Build Team's Notice of Intent to Request Termination and / or Substitution. If the DBE subcontractor objects to the intended termination / substitution, the DBE, within five (5) business days, must advise the Design-Build Team and the Department of the reasons why the action should not be approved. The five-day notice period shall begin on the next business day after written notice is provided to the DBE subcontractor.

A committed DBE subcontractor or any portion of its work may only be terminated after receiving the Department's written approval based upon a finding of good cause for the proposed termination and/or substitution. Good cause does not exist if the Design-Build Team seeks to terminate a DBE or any portion of its work that it relied upon to obtain the contract so that the Design-Build Team can self-perform the work for which the DBE was engaged, or so that the Design-Build Team can substitute another DBE or non-DBE contractor after contract award. For purposes of this section, good cause shall include the following circumstances:

- (a) The listed DBE subcontractor fails or refuses to execute a written contract.
- (b) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
- (c) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- (d) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- (e) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law.
- (f) The listed DBE subcontractor is not a responsible contractor.
- (g) The listed DBE voluntarily withdraws from the project and provides written notice of withdrawal.
- (h) The listed DBE is ineligible to receive DBE credit for the type of work required.
- (i) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- (j) Other documented good cause that compels the termination of the DBE subcontractor.

The Design-Build Team shall comply with the following for replacement of a committed DBE:

(A) Performance Related Replacement

When a committed DBE is terminated for good cause as stated above, an additional DBE that was submitted at the time of the execution of the relevant Contract Document may be used to fulfill the DBE commitment. A good faith effort will only be required for removing a committed DBE if there were no additional DBEs submitted at the time the relevant Contract Document was executed to cover the same amount of work as the DBE that was terminated.

If a replacement DBE is not found that can perform at least the same amount of work as the terminated DBE, the Design-Build Team shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

- (1) Copies of written notification to DBEs that their interest is solicited in contracting the work defaulted by the previous DBE or in subcontracting other items of work in the contract.
 - (2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:
 - (a) The names, addresses, and telephone numbers of DBEs who were contacted.
 - (b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
 - (3) A list of reasons why DBE quotes were not accepted.
 - (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Design-Build Team.
- (B) Decertification Replacement
- (1) When a committed DBE is decertified by the Department after the SAF (*Subcontract Approval Form*) has been received by the Department, the Department will not require the Design-Build Team to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.
 - (i) If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract. The Department may continue to count participation equal to the remaining work performed by the decertified firm which will count toward the contract goal requirement but not the overall goal.
 - (ii) If the DBE's ineligibility is caused solely by its acquisition by or merger with a non-DBE during the performance of the contract. The Department may not continue to count the portion of the decertified firm's performance on the contract remaining toward either the contract goal or the overall goal, even if the Contractor has executed a subcontract with the firm or the Department has executed a prime contract with the DBE that was later decertified.
 - (2) When a committed DBE is decertified prior to the Department receiving the SAF (*Subcontract Approval Form*) for the named DBE firm, the Design-Build Team shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to NCDOT (See A herein for required documentation).

All requests for replacement of a committed DBE firm shall be submitted to the Engineer for approval on Form RF-1 (DBE Replacement Request). If the Prime Contractor or any affiliated companies within the Design-Build Team fails to follow this procedure they may be disqualified from further bidding for a period of up to six months.

13.16 Changes in the Work

When the Engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Design-Build Team will not be required to seek additional participation. When the Engineer makes changes that result in additional work to be performed by a DBE based upon the Design-Build Team's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Design-Build Team shall seek additional participation by DBEs unless otherwise approved by the Engineer.

When the Engineer makes changes that result in an alteration of plans or details of construction, and a portion or all of the work had been expected to be performed by a committed DBE, the Design-Build Team shall seek participation by DBEs unless otherwise approved by the Engineer.

When the Design-Build Team requests changes in the work that result in the reduction or elimination of work that the Design-Build Team committed to be performed by a DBE, the Design-Build Team shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

13.17 Reports and Documentation

A SAF (*Subcontract Approval Form*) shall be submitted for all work which is to be performed by a DBE subcontractor. The Department reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the Design-Build Team shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Design-Build Team shall furnish the Engineer a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

13.18 Reporting Disadvantaged Business Enterprise Participation

The Design-Build Team shall provide the Engineer with an accounting of payments made to all DBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

- (A) Withholding of money due in the next partial pay estimate; or
- (B) Removal of an approved prime contractor or other affiliated companies within the Design-Build Team from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Design-Build Team to submit the required information in the time frame specified may result in the disqualification of that prime contractor and any affiliate companies within the Design-Build Team from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that prime contractor or any affiliate companies within the Design-Build Team from being approved for work on future NCDOT projects until the required information is submitted.

Design-Build Teams reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Engineer can request written verification of subcontractor payments.

The Design-Build Team shall report the accounting of payments through the Department's DBE Payment Tracking System.

13.19 Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *Standard Specifications* may be cause to disqualify the Prime Contractor or any affiliated companies within the Design-Build Team from further bidding for a specified length of time.

SECTION 14 – FEDERAL AID CONTRACT PROVISIONS

14.1 General

The Project will be funded in part with federal funds. Notwithstanding anything to the contrary in the Contract Documents, if any conflict is identified between any federal requirement and the requirements of the Contract Documents, the federal requirements shall prevail over any such conflicting provisions.

The Design-Build Team shall comply, and cause its team members and all subcontractors of all tiers to comply, with all federal requirements. The Design-Build Team shall include the federal requirements in all subcontracts on the Project, so that such provisions will be binding upon each subcontractor working on the Project. The Design-Build Team shall take such action with respect to any subcontract or purchase order as the Department may direct as means of enforcing such provisions.

The Design-Build Team agrees and acknowledges that FHWA concurrence must be obtained prior to certain progressions of the work as may be required under 23 CFR Part 635, including FHWA concurrence prior to any Preconstruction Agreement, Construction Contract, Early Work Package or amendments thereto.

14.2 Build America, Buy America

The Standard Specifications are revised as follows:

Page 1-48, Article 106-1 GENERAL REQUIREMENTS, add the following after line 49:

(C) Build America, Buy America (BABA)

All manufactured products and construction materials permanently incorporated into any project must meet requirements of the Build America, Buy America (BABA) Act of the Infrastructure Investment and Jobs Act (IIJA). Before any material or product shown on the Department's Build America, Buy America (BABA) List is included for payment on a monthly estimate, the Contractor shall furnish the Engineer with a notarized certification certifying that the items conform to the BABA Act. The Department's Build America Buy America (BABA) List can be found on the Department's website below.

<https://connect.ncdot.gov/letting/LetCentral/NCDOT%20BABA%20Materials%20List.pdf>

Each purchase order issued by the Contractor or a subcontractor for items on the BABA List to be permanently incorporated into any project shall contain in bold print a statement advising the supplier that the manufactured products and construction materials must be produced in the United States of America. The Contractor and all affected subcontractors shall maintain a separate file for BABA List items so that verification of the Contractor's efforts to purchase items produced in

the United States can readily be verified by an authorized representative of the Department or the Federal Highway Administration (FHWA).

14.3 Certification for Federal-Aid Projects

The Proposer certifies, by signing this Master Agreement and all subsequent Contract Documents for this Project, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

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

The Design-Build Team also agrees by signing this Master Agreement and all subsequent Contract Documents for this Project, he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

14.4 U.S. Department of Transportation Hotline

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the hotline to report such activities.

The hotline is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse, and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

14.5 On-the-Job Training

14.5.1 Description

The North Carolina Department of Transportation will administer a custom version of the Federal On-the-Job Training (OJT) Program, commonly referred to as the Alternate OJT Program. All contractors (existing and newcomers) will be automatically placed in the Alternate Program. Standard OJT requirements typically associated with individual projects will no longer be applied at the project level. Instead, these requirements will be applicable on an annual basis for each contractor administered by the OJT Program Manager.

On the Job Training shall meet the requirements of 23 CFR 230.107 (b), 23 USC - Section 140, this provision and the On-the-Job Training Program Manual.

The Alternate OJT Program will allow a contractor to train employees on Federal, State and privately funded projects located in North Carolina. However, priority shall be given to training employees on NCDOT Federal-Aid funded projects.

14.5.2 Minorities and Women

Developing, training and upgrading of minorities and women toward journeyman level status is a primary objective of this special training provision. Accordingly, the Contractor shall make every effort to enroll minority and women as trainees to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

14.5.3 Assigning Training Goals

The Department, through the OJT Program Manager, will assign training goals for a calendar year based on the contractors' past three years' activity and the contractors' anticipated upcoming year's activity with the Department. At the beginning of each year, all contractors eligible will be contacted by the Department to determine the number of trainees that will be assigned for the upcoming calendar year. At that time the Contractor shall enter into an agreement with the Department to provide a self-imposed on-the-job training program for the calendar year. This agreement will include a specific number of annual training goals agreed to by both parties. The number of training assignments may range from one to 15 per contractor per calendar year. The Contractor shall sign an agreement to fulfill their annual goal for the year.

14.5.4 Training Classifications

The Contractor shall provide on-the-job training aimed at developing full journeyman level workers in the construction craft / operator positions. Preference shall be given to providing training in the following skilled work classifications:

Equipment Operators	Office Engineers
Truck Drivers	Estimators
Carpenters	Iron / Reinforcing Steel Workers
Concrete Finishers	Mechanics
Pipe Layers	Welders

The Department has established common training classifications and their respective training requirements that may be used by the contractors. However, the classifications established are not all-inclusive. Where the training is oriented toward construction applications, training will be allowed in lower-level management positions such as office engineers and estimators. Contractors shall submit new classifications for specific job functions that their employees are performing. The Department will review and recommend for acceptance to FHWA the new classifications proposed by contractors, if applicable. New classifications shall meet the following requirements:

Proposed training classifications are reasonable and realistic based on the job skill classification needs, and

The number of training hours specified in the training classification is consistent with common practices and provides enough time for the trainee to obtain journeyman level status.

The Contractor may allow trainees to be trained by a subcontractor provided that the Contractor retains primary responsibility for meeting the training and this provision is made applicable to the subcontractor. However, only the Contractor will receive credit towards the annual goal for the trainee.

Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman level status or in which they have been employed as a journeyman.

14.5.5 Records and Reports

The Contractor shall maintain enrollment, monthly and completion reports documenting company compliance under these contract documents. These documents and any other information as requested shall be submitted to the OJT Program Manager.

Upon completion and graduation of the program, the Contractor shall provide each trainee with a certification Certificate showing the type and length of training satisfactorily completed.

14.5.6 Trainee Interviews

All trainees enrolled in the program will receive an initial and Trainee / Post graduate interview conducted by the OJT program staff.

14.5.7 Trainee Wages

Contractors shall compensate trainees on a graduating pay scale based upon a percentage of the prevailing minimum journeyman wages (Davis-Bacon Act). Minimum pay shall be as follows:

- 60 percent of the journeyman wage for the first half of the training period
- 75 percent of the journeyman wage for the third quarter of the training period
- 90 percent of the journeyman wage for the last quarter of the training period

In no instance shall a trainee be paid less than the local minimum wage. The Contractor shall adhere to the minimum hourly wage rate that will satisfy both the NC Department of Labor (NCDOL) and the Department.

14.5.8 Achieving or Failing to Meet Training Goals

The Contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and who receives training for at least 50 percent of the specific program requirement. Trainees will be allowed to be transferred between projects if required by the Contractor's scheduled workload to meet training goals.

If a contractor fails to attain their training assignments for the calendar year, they may be taken off the NCDOT's Bidders List.

14.5.9 Measurement and Payment

No compensation will be made for providing required training in accordance with these contract documents.

14.6 Title VI and Nondiscrimination

The North Carolina Department of Transportation is committed to carrying out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts.

The provisions of this section related to United States Department of Transportation (US DOT) Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21, 23 United States Code (U.S.C.) 140 and 23 CFR part 200 (or 49 CFR 303, 49 U.S.C. 5332 or 49 U.S.C. 47123) are applicable to all North Carolina Department of Transportation (NCDOT) contracts and to all related subcontracts, material supply, engineering, architectural and other service contracts, regardless of dollar amount. Any Federal provision that is specifically required not specifically set forth is hereby incorporated by reference.

(1) Title VI Assurances (USDOT Order 1050.2A, Appendix A)

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

(a) Compliance with Regulations

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

(b) Nondiscrimination

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(c) Solicitations for Subcontractors, Including Procurements of Materials and Equipment

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

(d) Information and Reports

The contractor shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor shall so certify to the Recipient or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance:

In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it and/or the FHWA may determine to be appropriate, including, but not limited to:

- (i) Withholding payments to the contractor under the contract until the contractor complies; and/or
- (ii) Cancelling, terminating, or suspending a contract, in whole or in part.

(f) Incorporation of Provisions

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

(2) Title VI Nondiscrimination Program (23 CFR 200.5(p))

The North Carolina Department of Transportation (NCDOT) has assured the USDOT that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, sex, age, or disability (including religion/creed or income-level, where applicable), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

(a) During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. To comply with this section, the prime contractor shall:

1. Post NCDOT's Notice of Nondiscrimination and the Contractor's own Equal Employment Opportunity (EEO) Policy in conspicuous locations accessible to all employees, applicants and subcontractors on the jobsite.
2. Physically incorporate the required Title VI clauses into all subcontracts on federally-assisted and state-funded NCDOT projects, and ensure inclusion by subcontractors into all lower-tier subcontracts.
3. Required Solicitation Language. The Contractor shall include the following notification in all solicitations for bids and requests for work or material, regardless of funding source:

“The North Carolina Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. In accordance with other related nondiscrimination authorities, bidders and

contractors will also not be discriminated against on the grounds of sex, age, disability, low-income level, creed/religion, or limited English proficiency in consideration for an award.”

4. Physically incorporate the FHWA-1273, in its entirety, into all subcontracts and subsequent lower tier subcontracts on Federal-aid highway construction contracts only.
 5. Provide language assistance services (i.e., written translation and oral interpretation), free of charge, to LEP employees and applicants. Contact NCDOT OCR for further assistance, if needed.
 6. For assistance with these Title VI requirements, contact the NCDOT Title VI Nondiscrimination Program at 1-800-522-0453.
- (b) Subrecipients (e.g. cities, counties, LGAs, planning organizations) may be required to prepare and submit a Title VI Plan to NCDOT, including Title VI Assurances and/or agreements. Subrecipients must also ensure compliance by their contractors and subrecipients with Title VI. (23 CFR 200.9(b)(7))
- (c) If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. (23 CFR 200.9(b)(15))
- (d) The Contractor is responsible for notifying subcontractors of NCDOT’s External Discrimination Complaints Process.
1. Applicability
Title VI and related laws protect participants and beneficiaries (e.g., members of the public and contractors) from discrimination by NCDOT employees, subrecipients and contractors, regardless of funding source.
 2. Eligibility
Any person—or class of persons—who believes he/she has been subjected to discrimination based on race, color, national origin, Limited English Proficiency (LEP), sex, age, or disability (and religion in the context of employment, aviation, or transit) may file a written complaint. The law also prohibits intimidation or retaliation of any sort.
 3. Time Limits and Filing Options
Complaints may be filed by the affected individual(s) or a representative and must be filed no later than 180 calendar days after the following:
 - (i) The date of the alleged act of discrimination; or
 - (ii) The date when the person(s) became aware of the alleged discrimination; or
 - (iii) Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.Title VI and related discrimination complaints may be submitted to the following entities:

- North Carolina Department of Transportation, Office of Civil Rights, Title VI Program, 1511 Mail Service Center, Raleigh, NC 27699-1511; toll free 1-800-522-0453
- Federal Highway Administration, North Carolina Division Office, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919-747-7010
- US Department of Transportation, Departmental Office of Civil Rights, External Civil Rights Programs Division, 1200 New Jersey Avenue, SE, Washington, DC 20590; 202-366-4070

4. Format for Complaints

Complaints must be in writing and signed by the complainant(s) or a representative, and include the complainant's name, address, and telephone number. Complaints received by fax or e-mail will be acknowledged and processed. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. Complaints will be accepted in other languages, including Braille.

5. Discrimination Complaint Form

Contact NCDOT Civil Rights to receive a full copy of the Discrimination Complaint Form and procedures.

6. Complaint Basis

Allegations must be based on issues involving race, color, national origin (LEP), sex, age, disability, or religion (in the context of employment, aviation or transit). "Basis" refers to the complainant's membership in a protected group category.

**TABLE 103-1
COMPLAINT BASIS**

Protected Categories	Definition	Examples	Applicable Nondiscrimination Authorities
Race and Ethnicity	An individual belonging to one of the accepted racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group	Black/African American, Hispanic/Latino, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, White	Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; 23 CFR 200; 49 U.S.C. 5332(b); 49 U.S.C. 47123. (<i>Executive Order 13166</i>)
Color	Color of skin, including shade of skin within a racial group	Black, White, brown, yellow, etc.	
National Origin (<i>Limited English Proficiency</i>)	Place of birth. Citizenship is not a factor. (<i>Discrimination based on language or a person's accent is also covered</i>)	Mexican, Cuban, Japanese, Vietnamese, Chinese	
Sex	Gender. The sex of an individual. <i>Note: Sex under this program does not include sexual orientation.</i>	Women and Men	1973 Federal-Aid Highway Act; 49 U.S.C. 5332(b); 49 U.S.C. 47123.

Age	Persons of any age	21-year-old person	Age Discrimination Act of 1975 49 U.S.C. 5332(b); 49 U.S.C. 47123.
Disability	Physical or mental impairment, permanent or temporary, or perceived.	Blind, alcoholic, para-amputee, epileptic, diabetic, arthritic	Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990
Religion (in the context of employment) <i>(Religion/ Creed in all aspects of any aviation or transit-related construction)</i>	An individual belonging to a religious group; or the perception, based on distinguishable characteristics that a person is a member of a religious group. In practice, actions taken as a result of the moral and ethical beliefs as to what is right and wrong, which are sincerely held with the strength of traditional religious views. Note: Does not have to be associated with a recognized religious group or church; if an individual sincerely holds to the belief, it is a protected religious practice.	Muslim, Christian, Sikh, Hindu, etc.	Title VII of the Civil Rights Act of 1964; 23 CFR 230; FHWA-1273 Required Contract Provisions. <i>(49 U.S.C. 5332(b); 49 U.S.C. 47123)</i>

(3) Pertinent Nondiscrimination Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR Part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- (h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- (i) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- (m) Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq., Pub. L. 88-352), (prohibits employment discrimination on the basis of race, color, religion, sex, or national origin).

(4) Additional Title VI Assurances

***The following Title VI Assurances (Appendices B, C and D) shall apply, as applicable*

(a) Clauses for Deeds Transferring United States Property (1050.2A, Appendix B)

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4.

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the North Carolina Department of Transportation (NCDOT) will accept title to the lands and maintain the project constructed thereon in accordance with the North Carolina General Assembly, the Regulations for the Administration of the Federal-Aid Highway Program, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the NCDOT all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the North Carolina Department of Transportation (NCDOT) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the NCDOT, its successors and assigns. The NCDOT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the NCDOT will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

(b) Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program (1050.2A, Appendix C)

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the North Carolina Department of Transportation (NCDOT) pursuant to the provisions of Assurance 7(a):

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - (i.) In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied

the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
3. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the NCDOT and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

(c) Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program (1050.2A, Appendix D)

The following clauses will be included in deeds, licenses, permits, or similar instruments/ agreements entered into by the North Carolina Department of Transportation (NCDOT) pursuant to the provisions of Assurance 7(b):

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, the NCDOT will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
3. With respect to deeds, in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will there upon revert to and vest in and become the absolute property of the NCDOT and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

14.7 FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts

Revised October 23, 2023

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action.

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101.

Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40](#)

[U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. Conformance. (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. Fringe benefits not expressed as an hourly rate. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. Unfunded plans. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. Interest. In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. Withholding requirements. The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed

in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its procurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long- standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. Instructions for Certification – Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

14.8 Minimum Wages (General Decision NC20250086 01/03/2025_NC86)

Date: January 3, 2025

General Decision Number: NC20250086 01/03/2025 NC86

Superseded General Decision Numbers: NC20240086

State: North Carolina

Construction Type: HIGHWAY

COUNTIES:

Alleghany	Jackson	Surry
Ashe	Lincoln	Swain
Avery	Macon	Transylvania
Cherokee	McDowell	Watauga
Clay	Mitchell	Wilkes
Cleveland	Polk	Yancey
Graham	Rutherford	

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance

of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number
0

Publication Date
01/03/2025

SUNC2014-001 11/13/2014

	Rates	Fringes
BLASTER	21.83	
CARPENTER	12.54 **	
CEMENT MASON/CONCRETE FINISHER	14.10 **	
ELECTRICIAN		
Electrician	19.19	2.39
Telecommunications Technician	15.13 **	
IRONWORKER	14.53 **	
LABORER		
Asphalt Raker and Spreader	12.23 **	
Asphalt Screed/Jackman	15.22 **	
Carpenter Tender	10.00 **	
Cement Mason/Concrete Finisher Tender	12.26 **	
Common or General	10.68 **	
Guardrail/Fence Installer	13.43 **	
Pipelayer	12.22 **	
Traffic Signal/Lighting Installer	15.85 **	
PAINTER		
Bridge	19.62	
POWER EQUIPMENT OPERATORS		
Asphalt Broom Tractor	11.00 **	
Bulldozer Fine	16.20 **	
Bulldozer Rough	13.89 **	
Concrete Grinder/Groover	24.66	
Crane Boom Trucks	14.44 **	.53
Crane Other	19.59	
Crane Rough/All-Terrain	21.25	
Drill Operator Rock	15.25 **	
Drill Operator Structure	20.92	
Excavator Fine	16.11 **	
Excavator Rough	13.10 **	
Grader/Blade Fine	19.24	
Grader/Blade Rough	13.07 **	
Loader 2 Cubic Yards or Less	13.38 **	
Loader Greater Than 2 Cubic Yards	16.01 **	
Material Transfer Vehicle (Shuttle Buggy)	17.39	
Mechanic	18.51	
Milling Machine	13.88 **	
Off-Road Hauler/Water Tanker	13.87 **	
Oiler/Greaser	14.98 **	
Pavement Marking Equipment	13.33 **	

	Rates	Fringes
Paver Asphalt	15.68 **	.05
Roller Asphalt Breakdown	14.05 **	.06
Roller Asphalt Finish	14.98 **	.04
Roller Other	11.75 **	
Scraper Finish	13.87 **	
Scraper Rough	11.53 **	
Slip Form Machine	20.79	
Tack Truck/Distributor Operator	14.67 **	.06
TRUCK DRIVER		
GVWR of 26,000 Lbs or Less	11.72 **	
GVWR of 26,001 Lbs or Greater	13.50 **	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <http://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than "SU", "UAVG", "SA", or "SC" denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The

next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing this classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The "SU" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

"SU" wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The "SA" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R. 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the "SA" identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

- 1) Has there been an initial decision in the matter? This can be:
 - a) a survey underlying a wage determination
 - b) an existing published wage determination
 - c) an initial WHD letter setting forth a position on a wage determination matter
 - d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

- 2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

- 3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

END OF GENERAL DECISION

14.9 Minority and Female Employment Requirements

NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (*EXECUTIVE NUMBER 11246*)

1. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, see as shown on the attached sheet entitled "Employment Goals for Minority and Female Participation".

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in *41 CFR Part 60-4* shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in *41 CFR 60-4.3(a)*, and its effort to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project or the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the executive Order and the regulations in *41 CFR Part 60-4*. Compliance with the goals will be measured against the total work hours performed.

2. As used in this Notice and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the cover sheet of the proposal form and contract.

**EMPLOYMENT GOALS FOR MINORITY
AND FEMALE PARTICIPATION**

Economic Areas

Area 023 29.7%

Bertie County
Camden County
Chowan County
Gates County
Hertford County
Pasquotank County
Perquimans County

Area 024 31.7%

Beaufort County
Carteret County
Craven County
Dare County
Edgecombe County
Green County
Halifax County
Hyde County
Jones County
Lenoir County
Martin County
Nash County
Northampton County
Pamlico County
Pitt County
Tyrrell County
Washington County
Wayne County
Wilson County

Area 025 23.5%

Columbus County
Duplin County
Onslow County
Pender County

Area 026 33.5%

Bladen County
Hoke County
Richmond County
Robeson County
Sampson County
Scotland County

Area 027 24.7%

Chatham County
Franklin County
Granville County
Harnett County
Johnston County
Lee County
Person County
Vance County
Warren County

Area 028 15.5%

Alleghany County
Ashe County
Caswell County
Davie County
Montgomery County
Moore County
Rockingham County
Surry County
Watauga County
Wilkes County

Area 029 15.7%

Alexander County
Anson County
Burke County
Cabarrus County
Caldwell County
Catawba County
Cleveland County
Iredell County
Lincoln County
Polk County
Rowan County
Rutherford County
Stanly County

Area 0480 8.5%

Buncombe County
Madison County

Area 030 6.3%

Avery County
Cherokee County
Clay County
Graham County
Haywood County
Henderson County
Jackson County
McDowell County
Macon County
Mitchell County
Swain County
Transylvania County
Yancey County

SMSA AreasArea 5720 26.6%

Currituck County

Area 9200 20.7%

Brunswick County

New Hanover County

Area 2560 24.2%

Cumberland County

Area 6640 22.8%

Durham County

Orange County

Wake County

Area 1300 16.2%

Alamance County

Area 3120 16.4%

Davidson County

Forsyth County

Guilford County

Randolph County

Stokes County

Yadkin County

Area 1520 18.3%

Gaston County

Mecklenburg County

Union County

Goals for FemaleParticipation in Each Trade

(Statewide) 6.9%

SECTION 15 – DIVISION ONE OF THE STANDARD SPECIFICATIONS

Division One of the 2024 NCDOT *Standard Specifications for Roads and Structures (Standard Specifications)* shall apply except as follows:

Definitions: Throughout Division One of the *Standard Specifications*, the term “Contractor” is replaced with “Design-Build Team”, Throughout Article 102-2, the term “State Contractual Services Engineer” is replaced with “State Prequalifications Engineer”. The replacement of “Contractor” with “Design-Build Team” does not apply to Article 102-2. The replacement of the above terms also does not apply when the terms are part of a phrase (e.g. bid bond, prime contractor, total amount bid, etc.)

Deletions: Articles / Subarticles 102-1, 102-2(B), 102-3, 102-4, 102-5, 102-8, 102-9(C)(2), 102-10, 102-11, 102-11, 102-13, 102-14, 103-1, 103-2, 103-3, 103-4(B), 103-6, of the *Standard Specifications* are deleted from Design-Build Contracts.

Modifications: The remainder of this Standard Special Provision includes modifications to Division One of the *Standard Specifications*.

SECTION 101 DEFINITION OF TERMS

Page 1-3, Article 101-3, replace and add certain definitions as follows:

ADDITIONAL WORK

Additional work is that which results from a change or alteration to the contract and for which there are contract unit prices in the original contract or an executed supplemental agreement.

ADVERTISEMENT

The public advertisement inviting Statements of Qualifications for the design and construction of specific projects.

AWARD

The decision of the Department of Transportation to accept the Statement of Qualifications, Guaranteed Maximum Price, or Construction Agreed Price as applicable of the selected Design-Build Team for work which is subject to the furnishing of payment and performance bonds, and such other conditions as may be otherwise provided by law, the Request for Proposals, and the *Standard Specifications*.

CONTRACT

The executed Master Agreement between the Department and the successful Proposer, covering the performance of, and compensation for, the work. The term contract is all inclusive with reference to all written agreements including Preconstruction Agreements, Construction Contracts, and Early Work Packages affecting a contractual relationship and all documents referred to therein. The contract shall include, but not be limited to the Master Agreement and all Contract Documents, contract bonds, plans and associated special provisions prepared by the Design-Build Team, standard specifications and supplemental specifications, standard special provisions and project special provisions contained in the Contract Documents or as developed by the Design-Build Team and accepted by the Department, and all executed supplemental agreements.

DATE OF AVAILABILITY

That date, established as set forth in the Contract Documents, by which it is anticipated that the Contract will be executed and sufficient design efforts or work sites within the project limits will be available for the Design-Build Team to begin the controlling operations or design.

DESIGN-BUILD

A form of contracting in which the successful Proposer undertakes responsibility for both the design and construction of a project.

DESIGN-BUILD TEAM

An individual, partnership, joint venture, corporation or other legal entity that furnishes the necessary design and construction services, whether by itself or through subcontracts.

PLANS

The project plans, Standard Drawings, working drawings and supplemental drawings, or reproductions thereof, accepted by the Engineer, which show the location, character, dimensions and details of the work to be performed. Unless noted otherwise within the Contract Documents, the term “plans” refers to plans as developed by the Design-Build Team and accepted by the Department.

STANDARD DRAWINGS

Drawings approved for repetitive use, showing details to be used where appropriate. All Standard Drawings approved by the Department plus subsequent revisions and additions. Standard Drawings are available for purchase from:

State Contract Officer
1591 Mail Service Center
Raleigh, NC 27699-1591

(A) Preliminary Plans

Department-furnished drawings or as developed by the Design-Build Team.

(B) Project Plans

Construction drawings prepared, sealed and completed by the Design-Build Team that contain specific details and dimensions peculiar to the work.

(C) Working Drawings and Supplemental Drawings

Supplemental design sheets, shop drawings, or similar data which the Design-Build Team is required to submit to the Engineer.

(D) As-Built Plans

Coordinately correct plans documenting the details, dimensions and locations of the completed work.

RIGHT OF WAY

The land area shown on the plans as right of way within which the project is to be constructed.

SCHEDULE OF VALUES

A schedule of work items necessary to complete work, along with the progress of each work item, primarily for the purpose of partial payments.

TABLE OF QUANTITIES

A listing of work items (corresponding to the items in the Trns*port pay item list) that contributes to a project completion. The table shall include estimated quantities for each work item.

SECTION 102 PROPOSAL REQUIREMENTS AND CONDITIONS

Page 1-14, Article 102-7, 4th paragraph, delete the first two sentences and replace with the following:

Details shown in the subsurface investigation report are preliminary only. The subsurface investigation and subsurface report, if provided, is done so for information purposes only.

SECTION 103 AWARD AND EXECUTION OF CONTRACT

Page 1-24, Subarticle 103-4(A), first paragraph, replace the 3rd and 4th sentences with the following:

Where award is to be made, the notice of award will be issued within 75 days after the selection of the Design-Build Team, or upon issuance of any necessary debt instrument, whichever is later, but not to exceed 120 days; except with the consent of the Design-Build Team the decision to award the contract to such bidder may be delayed for as long a time as may be agreed upon by the Department and such Proposer. In the absence of such agreement, the Proposer may withdraw from consideration of award at the expiration of the 120 days without penalty if no notice of award has been issued.

SECTION 104 SCOPE OF WORK

Page 1-26, delete Article 104-1 and replace with the following:

104-1 INTENT OF CONTRACT

The intent of the contract is to prescribe the work or improvements that the Design-Build Team undertakes to perform, in full compliance with the Contract Documents. In case the method of construction or character of any part of the work is not covered by the contract, this section shall apply. The Design-Build Team shall perform all work in accordance with the Contract Documents or as may be modified by written orders, and shall do such additional, extra, and incidental work as may be considered necessary to complete the work to the full intent of the contract, subject to Design-Build Team's rights to seek additional compensation or an extension of time as set forth in the Contract Documents. Unless otherwise provided elsewhere in the contract, the Design-Build Team shall furnish all implements, machinery, equipment, tools, materials, supplies, transportation, and labor necessary for the design, prosecution and completion of the work.

Page 1-26, Article 104-3, replace “plans or details of construction” with “Contract Documents” in all instances within this Article.

Page 1-34, Article 104-8, add the following Subarticle to the end of this article:

(E) Coordination with CPM

If the Design-Build Team requests additional compensation in accordance with Articles 104-3, 104-7, and 104-8, all as may be modified in this Section 15, a fragmentary logic diagram (fragnet) shall be prepared and submitted with such request. A fragnet is defined as the sequence of new activities that are proposed to be added to the current schedule to represent the alleged cost and potential time impact(s). The fragnet shall be developed with sufficient detail to clearly depict the alleged change to the current schedule of record.

The Design-Build Team shall prepare the fragnet depicting all activities and costs associated with the request for additional compensation. The fragnet shall identify all predecessor and successor activities, any changes in durations of existing activities and any activities added to or deleted from the current schedule or record as a direct result of the request for additional compensation.

If the request for additional compensation is agreeable to the Engineer, the Engineer will evaluate the provided fragnet within the current schedule of record as follows:

- (1) The Design-Build Team shall provide the fragnet, supporting information, analysis, and narrative describing how the fragnet is incorporated (predecessors and successors) into the schedule referenced below.
- (2) The Engineer and Design-Build Team will collectively pursue the resolution of the fragnet as expeditiously as possible. Until such resolution has occurred, the fragnet shall not be incorporated into future schedule updates.
- (3) The Design-Build Team shall update the current schedule of record to the anticipated supplemental agreement effective date and provide this schedule to the Engineer for review.
- (4) The Design-Build Team shall provide a separate updated schedule, as defined in item 2 above, with the fragnet inserted.
- (5) The revised Scheduled Completion Date will be evaluated by the Engineer; and
- (6) If the associated time difference in the above Scheduled Completion Dates (items 2 and 3 above) results in a time extension, per Article 108-10, such extension will be provided within the supplemental agreement, unless modified through compensation for acceleration or other mitigation strategy. If project float is created by the work, it will be encompassed within the modified and updated schedule of record. Both the Design-Build Team and the NCDOT will have access to this float as detailed in Article 108-2 as modified in Section 15 of this Master Agreement.

Page 1-35, delete Article 104-10 and replace with the following:

104-10 MAINTENANCE OF THE PROJECT

The Design-Build Team shall maintain the project within the limits of the Early Work Package or Construction Contract, as applicable from the date of beginning construction on that project area until the Work of the Early Work Package or Construction Contract, as applicable, is finally accepted. Maintenance limits may be further refined as part of the Early Work Package or Construction Contract, as applicable. For sections of facilities impacted by utility construction / relocation performed by the Design-Build Team prior to beginning construction on the roadway project, maintenance of the impacted sections of facilities shall be performed by the Design-Build Team beginning concurrently with the impact. This maintenance shall be continuous and effective

and shall be prosecuted with adequate equipment and forces to the end that all work covered by the contract is kept in satisfactory and acceptable conditions at all times.

All existing and constructed guardrail / guiderail within the project limits shall be included in this maintenance. The Design-Build Team shall perform weekly inspections of all guardrail and guiderail and shall report damages to the Engineer on the same day of the weekly inspection. Where damaged guardrail or guiderail is repaired or replaced as a result of maintaining the project in accordance with this Article, such repair or replacement shall be performed within seven consecutive calendar days of such inspection report.

The Design-Build Team shall maintain all existing drainage facilities, except where the work consists of resurfacing only, such that they are in the same condition upon acceptance of the project as they were when the project was made available to the Design-Build Team. In the event that the Design-Build Team's work is suspended for any reason, the Design-Build Team shall maintain the work covered by the contract, as provided herein. If the suspension of the work is due to reasons beyond the Design-Build Team's control, Design-Build Team shall receive payment as extra work for its actual costs associated with such maintenance. When a portion of the project is accepted as provided in Article 105-17, immediately after such acceptance, the Design-Build Team will not be required to maintain the accepted portion. Should latent defects be discovered or become evident in an accepted portion of the project, the Design-Build Team shall repair or replace the defective work at no cost to the Department.

Where an observation period(s) is required that extends beyond the final acceptance date, the Design-Build Team shall perform any work required by the observation period until completion of the observation period in accordance with the Contract Documents. Such observation period(s) and the requirements of the observation period(s) will be mutually agreed in the applicable Construction Contract, Early Works Package, or amendment thereto. Any observation period extending beyond final acceptance shall be separately defined and compensated in the applicable Early Work Package or Construction Contract.

With the exception of the maintenance of existing and constructed guardrail / guiderail, the Design-Build Team will not be directly compensated for any maintenance operations. The Design-Build Team will not be compensated for the performance of weekly inspections of guardrail / guiderail, and the damage reports required as described above. Authorized maintenance activities for existing and constructed guardrail / guiderail within the project limits will be paid for as extra work in accordance with Articles 104-7 and 104-8 of the *Standard Specifications*.

SECTION 105 CONTROL OF WORK

Pages 1-40, delete Article 105-2 and replace with the following:

105-2 PLANS AND WORKING DRAWINGS

All plans shall be supplemented by such approved working drawings as are necessary to adequately control the work. Working drawings furnished by the Design-Build Team and approved

by the Engineer shall consist of such detailed drawings as may be required to adequately control the work. They may include stress sheets, shop drawings, erection drawings, falsework drawings, cofferdam drawings, bending diagrams for reinforcing steel, catalog cuts, or any other supplementary drawings or similar data required of the Design-Build Team. When working drawings are approved by the Engineer, such approval shall not operate to relieve the Design-Build Team of any of his responsibility under the contract for the successful completion of the work.

Changes on shop drawings after approval and / or distribution shall be subject to the approval of the Engineer and he shall be furnished a record of such changes.

Page 1-41, Article 105-3, add the following after the 3rd paragraph:

The Design-Build Team shall bear all the costs of providing the burden of proof that the nonconforming work is in reasonably close conformity with the Contract Documents. The Design-Build Team shall bear all risk for continuing with nonconforming work in question until it is accepted.

The decision whether the product is in reasonably close conformity with the Contract Documents is at the reasonable discretion of the Engineer.

Pages 1-41, delete Article 105-4 and replace with the following:

105-4 COORDINATION OF PLANS, SPECIFICATIONS, SUPPLEMENTAL SPECIFICATIONS, AND SPECIAL PROVISIONS

The Master Agreement, Preconstruction Phase Agreement, Construction Phase Contract, Early Work Packages, all construction Plans, the Standard Specifications, Supplemental Specifications and Special Provisions and all supplementary documents are essential parts of the contract and a requirement occurring in one is as binding as though occurring in all. They are complementary and describe and provide the complete contract.

In case of discrepancy or conflict, the order in which they govern shall be as follows:

- (A) Amendments to Preconstruction Phase Agreements Construction Phase Contracts, Early Work Packages
- (B) Preconstruction Phase Agreements Construction Phase Contracts, Early Work Packages
- (C) Accepted Plans and Details from the Design-Build Team
- (D) Standard Drawings
- (E) Standard Specifications

Where dimensions on the plans are given or can be computed from other given dimensions they shall govern over scaled dimensions.

The Design-Build Team shall take no advantage of any error or omission in the plans, estimated quantities, or specifications. In the event the Design-Build Team discovers an error or omission, he shall immediately notify the Engineer.

Page 1-43, delete Article 105-9 and replace with the following:

105-9 CONSTRUCTION STAKES, LINES, AND GRADES

The Design-Build Team shall be responsible for all surveying, construction staking and layout required in the performance of the work. The Design-Build Team shall be responsible for the accuracy of lines, slopes, grades and other engineering work which the Design-Build Team provides under this contract.

**SECTION 106
CONTROL OF MATERIAL**

Page 1-49, Article 106-2, add the following after the second paragraph:

Prior to beginning construction, unless otherwise approved by the Engineer, the Design-Build Team shall provide a Table of Quantities as described in Article 101-3 of these specifications.

The Table of Quantities Work Items shall correspond to Pay Items as defined in the Standard Specifications. These Work Items have associated Materials and Conversion Factors. For non-standard Work Items, a Generic Work Item with the correct Unit of Measure and in an appropriate category will be used. For example, “GENERIC TRAFFIC CONTROL ITEM - EA” or “GENERIC RETAINING WALL ITEM - LF”. For these Generic Work Items, Materials must be defined and appropriate conversion factors submitted.

An initial Table of Quantities shall be submitted no later than 21 calendar days after the date of execution of an Early Work Package or the Construction Contract, as applicable. The Table of Quantities shall be updated and resubmitted within 14 days of when a set of Plans is sealed as Release for Construction (RFC) Plans, and whenever there are substantial changes to the Quantities on previously incorporated RFC Plans.

A Certified Table of Quantities shall be submitted with each pay request. All Certified Tables of Quantities shall indicate that the information accurately represents the materials used for the work performed for which payment is requested and be notarized by a Design-Build Team representative.

Page 1-50, Article 106-6, add the following after the last paragraph:

For items normally pretested by the Department, the Design-Build Team shall provide a minimum of 30 days notice prior to the beginning of production of the items for this project along with final approved shop drawings.

**SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY
TO PUBLIC**

Page 1-60, delete Article 107-18 and replace with the following:

107-18 FURNISHING RIGHT OF WAY

The responsibility for coordinating the securing of all necessary rights of way is as outlined in the Preconstruction Phase Agreement, Construction Phase Contract, Early Work Packages, or amendments thereto.

**SECTION 108
PROSECUTION AND PROGRESS**

Page 1-63, Article 108-2, replace the 2nd paragraph with the following:

The Design-Build Team shall submit a Progress Schedule for review within twenty-one (21) days of the execution of the Master Agreement (or first Early Work Package), whichever is earlier. The Department will review the Progress Schedule within twenty-one (21) calendar days of receipt. The Design-Build Team shall make any necessary corrections and adjustments to the Progress Schedule as necessitated by the Department's review within seven (7) calendar days. The Department will review the revised Progress Schedule within seven (7) calendar days of receipt.

Page 1-63, Subarticle 108-2(A)(1), add the following:

(k) Utility relocation and construction

Page 1-64, Subarticle 108-2(A)(2), add the following:

(h) Critical design submittal dates

(i) Critical permitting dates

(j) Completion of right of way acquisition

(k) Completion of utility relocation and construction

Page 1-64, Article 108-2, add the following:

(D) The Design-Build Team shall provide a written narrative each month detailing the work and percentage of work completed, anticipated sequence of upcoming work (two-month forecast), controlling operation(s), intermediate completion dates, and milestones. If any milestones are exceeded or will not be achieved, the Design-Build Team shall provide in the written narrative details of the delay; controlling operation affected, impacts to other operations, revisions to

future intermediate completion dates and milestones, and remedial action necessary to get the project back to the original completion date.

Page 1-64, delete Article 108-3 and replace with the following:

108-3 PRECONSTRUCTION AND PRE-DESIGN CONFERENCES

The selected Design-Build Team shall meet with the Engineer for a pre-design conference concerning the design phase of the work. This conference shall be held prior to the commencement of work, as it is determined according to Article 108-1, and will be scheduled by the Engineer. At the predesign conference, the Design-Build Team shall furnish authorized signature forms and a list of all proposed subcontractors associated with the project design.

A preconstruction conference shall be held at least ten working days before construction activity begins. This second conference, concerning the construction phase, shall also be scheduled by the Engineer. The Design-Build Team shall give the Engineer a minimum of 45 days written notice before the Design-Build Team plans to begin construction activities. This will allow the Engineer time for any environmental agency representatives involved in the permitting process, as well as any other pertinent entities, to be scheduled to attend the preconstruction conference. If the Design-Build Team is responsible for utilities in accordance with Article 105-8 and the Request for Proposals, the Design-Build Team shall be responsible for coordinating with the Engineer in scheduling the utility owners attendance and for notifying the utility owners. The Design-Build Team shall also be responsible for coordinating with the Engineer in scheduling the attendance of subcontractors and others deemed appropriate, and for notifying them.

At the preconstruction conference, a list of any proposed subcontractors and major material suppliers associated with the construction of the project will be submitted.

If the contract has a DBE or WBE / MBE requirement, the Design-Build Team shall submit a Monitoring Spreadsheet for the DBE Open-Ended Performance Plan (OEPP) within thirty (30) days of construction.

In accordance with Article 1101-1 and the Request for Proposals, the Design-Build Team shall submit Transportation Management Plans, including but not limited to Temporary Traffic Control Plans. The Design-Build Team shall designate an employee who is competent and experienced in transportation management to implement and monitor the Transportation Management Plans. The qualifications of the designated employee must be satisfactory to the Engineer.

The Design-Build Team shall submit a Safety Plan and designate an employee as the Safety Supervisor.

Both plans shall be submitted at the preconstruction conference and must be satisfactory to the Engineer. Should the design plan include activities that would place personnel on the work site, Temporary Traffic Control Plans and a Safety Plan for those activities shall be submitted at the predesign conference.

During the preconstruction conference, the Engineer will designate a Department employee or employees who will be responsible to see that the Transportation Management Plans, including but not limited to the Temporary Traffic Control Plans, and any alterations thereto are implemented and monitored to the end that traffic is carried through the work in an effective manner. If approved by the Engineer, the Design-Build Team may designate one employee to be responsible for both the Temporary Traffic Control Plans and the Safety Plan. The Design-Build Team shall not designate its superintendent as the responsible person for either the Temporary Traffic Control Plans or the Safety Plan, unless approved by the Engineer.

If the project requires the Design-Build Team or State personnel work from falsework, within shoring, or in any other hazardous area, the Design-Build Team shall submit, as part of the Design-Build Team's Safety Plan, specific measures that will be used to ensure worker safety.

The Design-Build Team shall also submit a program for erosion control and pollution prevention on all projects involving clearing and grubbing, earthwork, structural work, or other construction, when such work is likely to create erosion or pollution problems.

If the Design-Build Team fails to provide the required submissions, the Engineer may order the preconstruction conference suspended until such time as they are furnished. Work shall not begin until the preconstruction conference has been concluded and the Safety Plan has been approved, unless authorized by the Engineer. The Design-Build Team shall not be entitled to additional compensation or an extension of contract time resulting from any delays due to such a suspension.

The Design-Build Team shall designate a qualified employee as Quality Control Manager. The Quality Control Manager shall be responsible for implementing and monitoring the quality control requirements of the project.

Page 1-64, Article 108-4, add the following sentence to the end of this article:

The Design-Build Team shall record the proceedings of these conferences and distribute the final minutes of the conferences to all attendees.

Page 1-65, Article 108-6, replace “40%” with “30%” in the 1st paragraph.

Page 1-66, Article 108-6, replace “35%” with “25%” in the 2nd paragraph.

Pages 1-67, delete Article 108-8 and replace with the following:

108-8 FAILURE TO MAINTAIN SATISFACTORY PROGRESS

The Engineer will utilize the Critical Path Method Project Schedule to evaluate the Design-Build Team's progress at the time each partial pay request and schedule update is submitted. The Design-Build Team's progress may be considered as unsatisfactory if, according to the CPM of Record, the scheduled completion date exceeds the relevant contract Completion Date.

Pursuant to Article 109-4 as may be amended in Section 15 of this Master Agreement, the Engineer shall calculate and withhold anticipated liquidated damages based on the Scheduled Completion

Date(s) as identified in the CPM of Record. If the Scheduled Completion Date(s) exceeds the relevant contract Completion Date(s) by more than 90 calendar days, the Engineer shall immediately withhold anticipated liquidated damages. The withheld amount shall be reviewed and adjusted in accordance with each subsequent CPM of Record.

The Design-Build Team's progress will be considered unsatisfactory if the CPM of Record, Scheduled Completion Date(s) falls behind the relevant contract Completion Date(s) by more than 180 days of the Contract Time. When the Design-Build Team's progress is found to be unsatisfactory, the Engineer may make written demand of the Design-Build Team to state in writing the reason for the unsatisfactory progress and produce such supporting data as the Engineer may require or the Design-Build Team may desire to submit. The Engineer will consider the justifications submitted by the Design-Build Team and extensions of the completion date(s) that have or may be allowed in accordance with Article 108-10 as may be amended in Section 15 of this Master Agreement.

When the Design-Build Team cannot satisfactorily justify the unsatisfactory progress the Engineer may invoke one or more of the following sanctions:

1. Withhold anticipated liquidated damages from amounts currently due or which become due.
2. Remove the Design-Build Team and individual managing firms of the Design-Build Team and / or prequalified design firms from the Department's Prequalified Bidders List for a period of time up to six months.

When any of the above sanctions have been invoked, they shall remain in effect until rescinded by the Engineer.

Page 1-70, Subarticle 108-10(B), add the following as the first paragraph:

Only delays to activities which affect the completion date or intermediate contract date will be considered for an extension of contract time. No extensions will be granted until a delay occurs which impacts the project's critical path and extends the work beyond the contract completion date or intermediate completion date. Any extension to the completion date or intermediate contract date will be based on the number of calendar days the completion date or intermediate completion date is impacted as determined by the Engineer's analysis.

Pages 1-70, delete Subarticle 108-10(B)(1) in its entirety.

Page 1-69, delete Article 108-10 and replace with the following:

108-10 CONTRACT TIME AND INTERMEDIATE CONTRACT TIME

(A) General

The contract time will be as defined in Section 101. No extensions to the completion date will be

authorized except as allowed by this Article. No time extensions will be provided for any period of time prior to the Contract Completion Date(s) as float and float consumption belongs to both parties. No modifications in the date of availability will be made for any reason whatsoever. NCDOT will only reimburse costs for delays as identified in Article 104-4 of the 2024 *NCDOT Standard Specifications for Roads and Structures*. Except for costs identified in Article 104-4, NCDOT will only evaluate requests for additional or unabsorbed overhead costs resulting from excusable delays (per 108-10(B)1 below).

Intermediate contract time, as defined in Section 101, will be that as allowed in the contract to complete a part, portion or phase of the total work covered in the contract. Intermediate completion dates and intermediate completion times set forth in the contract may be extended on the same basis as completion dates and as described in this Article.

When the liquidated damages stipulated in the contract are to be on an hourly basis, extensions, as described in this Article, will be considered on an hourly basis.

The Engineer will rely upon the CPM of Record in effect at the time the delay is recognized or occurs, whichever is earlier, to assess the effects of changes and revisions or other potential causes of delay to the scheduled completion date(s)

The Engineer will use the CPM of Record and the following guidelines to assess delays to the project:

- 1) The controlling operation of the work shall be the first activity on the critical path of the CPM of Record.
- 2) The Engineer will not grant a time extension for delays that result from schedule revisions of any sort, unless the revisions are necessary to mitigate unforeseeable and otherwise excusable delay, are required to incorporate changes to the work agreed to by the Engineer, or the revisions are expressly requested by the Engineer.
- 3) The Design-Build Team shall create the CPM of Record and shall be responsible for the accuracy and reliability of the CPM of Record. The Engineer will not grant a time extension for delays that result from improper planning, incorrect sequences, scheduling errors, scheduling omissions, missing work portions in the CPM of Record, or any other cause related to the Design-Build Team's failure to properly manage and / or schedule the work or the work of others. The Engineer will not consider a request for additional time from the Design-Build Team that relies on the assumption that the CPM of Record is inaccurate or erroneous.
- 4) When there are two or more causes for a critical delay, or in the case that two paths or activities are concurrently critical, the Engineer will only grant a time extension if all the causes for the critical delay are determined to be excusable per 108-10(B), in the Department's sole discretion.
- 5) The critical path is dynamic. The Engineer will assess the critical path on each day of an alleged delay. Only delays to the critical path will be eligible for consideration of a time extension.

- 6) The Engineer will use the CPM of Record in effect at the time of the delay to assess project delays after the occurrence. The Engineer will not use rejected schedules, later approved schedules, or new schedules, including “impacted” or “collapsed schedules,”
- 7) Float belongs to the project and shall be shared between the Design-Build Team and the Department on a first-come, first-served basis until it is depleted. Float shall not be for the exclusive use or benefit of either the NCDOT or the Design-Build Team.

(A) Completion Date, Substantial Completion Date, Intermediate Completion Date and Intermediate Completion Time Extensions

Only delays to activities which affect the completion date(s), Substantial Completion Date, intermediate contract date(s) and / or intermediate completion time(s) shall be considered for an extension of contract time. No extensions will be granted until a delay occurs which impacts the project’s critical path, consumes all available float, and extends the work beyond the contract completion dates(s), intermediate completion date(s), and / or intermediate completion time(s). Any extension to the completion date(s), intermediate completion date(s), and / or intermediate completion time(s) will be based on the number of calendar days the contract completion date(s), intermediate completion date(s), and / or intermediate completion time(s) is impacted as determined by the Engineer’s analysis. No extension of the contract completion date(s), intermediate completion date(s), and / or intermediate completion time(s) will be allowed for any reason except as provided for below:

- 1) If the Design-Build Team’s current controlling operation(s) are delayed by circumstances originating from work required under the contract and beyond the Design-Build Team’s control, and without the Design-Build Team’s fault or negligence, the Design-Build Team may, at any time prior to payment of the final estimate, make a written request to the Engineer for an extension of the contract completion date(s), intermediate completion date(s), and / or intermediated completion time(s). This request shall include the following:
 - a) The circumstances resulting in the alleged delay and documentation of said circumstances as may be required by the Engineer
 - b) The controlling operation(s) alleged to have been delayed
 - c) The calendar dates or calendar dates and times on which the controlling operation(s) were delayed
 - d) The number of calendar days or hours by which the Design-Build Team is requesting the contract completion date(s), intermediate completion date(s) and / or intermediate completion time(s) to be extended

If the Engineer determines that the controlling operation(s) were delayed because of circumstances beyond the control of, and without the Design-Build Team’s fault or negligence, and that the Design-Build Team has pursued the work in accordance with Article 108-1 of the *Standard Specifications for Roads and Structures*, the Engineer may grant the Excusable Delay and extend the contract completion date(s), intermediate completion date(s), and / or the intermediated completion time(s), unless otherwise precluded by other contract provisions.

- 2) Based upon historical weather data, the Department anticipates there will be 100 Workdays per year impacted by the combined effects of normal adverse weather and unfavorable conditions resulting from weather. The Design-Build Team's CPM Schedule shall include within their Activity Calendars this specified amount of normal adverse weather impacts per year or a proportionate allocation of time according to the duration of the partial year. For instance, for a six-month period, the allocation would be 50 days, reflecting half of the full year's anticipated weather impact allocation.

The Engineer will utilize the following formula to calculate the total anticipated Normal Adverse Weather Impacts for Intermediate Contract time(s) and Contract time:

$$\begin{array}{l} \text{Total Anticipated} \\ \text{Normal Adverse} \\ \text{Weather Impacts*} \end{array} = \begin{array}{l} \text{Total Intermediate} \\ \text{Contract Time or Contract} \\ \text{Time (Calendar Days)} \end{array} / \begin{array}{l} 365 \\ \text{(Days)} \end{array} \times \begin{array}{l} 100 \\ \text{(Days)} \end{array}$$

*Partial day calculation will be rounded up to the next full day. For instance, 48.2 day calculation will be rounded up to 49 Total Anticipated Normal Adverse Weather Impact days.

Per Section 11.17 of this Master Agreement, the Design-Build Team shall include within each CPM Schedule Update narrative, a list of Controlling Operation Workdays delayed by Normal Adverse Weather Impacts. The Engineer will assess the alleged weather impacts and determine the validity of weather impacts to the Controlling Operation(s) based upon review of project records. A cumulative sum of approved weather impact days from each CPM Schedule Update will be retained by the Engineer for the duration of the completion date(s), intermediate completion date(s), and / or intermediate completion time(s), including any extensions in contract time.

Upon completing the work within the respective completion date(s), intermediate completion date(s), and / or intermediate completion time(s), should the cumulative sum of approved weather impact days exceed the Total Anticipated Normal Adverse Weather Impacts (per above formula) the Engineer will grant a time extension. No compensation, including extended overhead or indirect costs, or other consideration will be given for extensions in the completion date(s), intermediate completion date(s), and / or intermediate completion time(s) due to delays caused by weather.

Where the intermediate contract time is 96 hours or less, no consideration whatsoever will be given for an extension in the intermediate contract time due to weather or conditions resulting from weather.

- 3) If the Engineer ordered changes in the work from that originally contemplated in the contract and those changes result in a reduction in quantities, elimination of items, additional work and / or extra work the Engineer will allow an extension in the contract completion date(s), Substantial Completion Date, intermediate completion date(s), and / or intermediate completion time(s) as the Engineer may deem warranted by such changes. Pursuit of the work with adequate forces and equipment and efficiency of the

Design-Build Team's operations will be considered by the Engineer in determining an extension in the contract completion date(s), Substantial Completion Date, intermediate completion date(s), and / or intermediate completion time(s). It shall be, however, the Design-Build Team's responsibility to show just cause for an extension in the contract completion date(s), Substantial Completion Date, intermediate completion date(s), and / or intermediate completion time(s) due to the aforesaid conditions.

The Design-Build Team's plea that insufficient contract time (days), intermediate contract time (days), and / or intermediate contract time (hours) was specified in the contract shall not be considered as a valid reason for an extension in the completion date, Substantial Completion Date, intermediate completion date, and / or intermediate completion time.

When all work governed by an Early Work Package or the Construction Contract is totally complete, with the exception of an item or items on which work is precluded by seasonal limitations set forth in the contract, the Engineer may, provided that the Design-Build Team has diligently pursued the work with adequate forces and equipment, waive the assessment of liquidated damages during the period of time from the date all work other than an item(s) precluded by seasonal limitations was completed until the seasonal limitations expiration date. The Design-Build Team shall make the request to waive the assessment of liquidated damages in writing prior to the requested waiver beginning date. The non-assessment of liquidated damages during the aforesaid period shall not operate to waive any other liquidated damages that may be assessable or any other contract terms.

Page 1-74, delete Subarticle 108-13(D)(2) in its entirety.

SECTION 109 MEASUREMENT AND PAYMENT

Page 1-75, Article 109-2, delete the last sentence of the 1st paragraph and replace with the following:

Payment to the Design-Build Team will be made only for the work completed, certified and accepted in accordance with the terms of the contract.

Pages 1-80, delete Subarticle 109-4(A) and replace with the following:

109-4 PARTIAL PAYMENTS

(A) General

Partial payments will be based upon progress estimates prepared by the Engineer at least once each month on the date established by the Engineer. Partial payments may be made twice each month if in the judgment of the Engineer the amount of work performed is sufficient to warrant such payment. No partial payment will be made when the total value

of work performed since the last partial payment amounts to less than \$10,000.00. Partial payments will be approximate only and will be subject to correction in the final estimate and payment.

When the contract includes one lump sum price for the entire work required by the contract, partial payments for the lump sum Design-Build price shall be based on a certified Schedule of Values submitted by the successful Design-Build Team and approved by the Engineer. The certification shall indicate the Design-Build Team has reviewed the information submitted and the information accurately represents the work performed for which payment is requested. The certified Schedule of Values shall be submitted no later than 30 calendar days after the date of award. Each item on the certified Schedule of Values shall be assigned a cost and quantity and shall be identified as an activity on the Progress Schedule. A revised certified Schedule of Values shall be submitted with each update of the Progress Schedule as described in Article 108-2, and as modified herein, or when requested by the Engineer. A certified copy of the Table of Quantities shall also be submitted with each payment request. The certification of the Table of Quantities shall indicate the Design-Build Team has reviewed the information submitted and the information accurately represents the materials for the work performed for which payment is requested.

When the contract includes lump sum items for portions of the work required by the contract, and the applicable section of the Specifications or Request for Proposals specify the means by which the total amount bid be included in the partial pay estimates, the Engineer will determine amounts due on the partial pay estimate in accordance with the applicable portion of the Specifications or Request for Proposals.

The Engineer will withhold an amount sufficient to cover anticipated liquidated damages as determined by the Engineer.

Page 1-81, Subarticle 109-5(D), delete the 4th and 5th paragraphs and replace with the following:

Partial payments will not be made on seed or any living or perishable plant materials.

Partial payment requests shall not be submitted by the Design-Build Team until those items requested have corresponding signed and sealed RFC Plans accepted by the Department.

Pages 1-83, Article 109-10, add the following as bullets (E), (F) and (G) under the 1st paragraph.

- (E) As-Built Plans
- (F) All documents required elsewhere in this RFP
- (G) Documents or guarantees to support any warranty provided by the Design Build Team

SECTION 16 – SIGNATURE SHEETS

16.1 Execution Requirements

The Master Agreement shall be properly executed. To constitute proper execution, the Master Agreement shall be executed in strict compliance with the following:

- a) If a Master Agreement is by an individual, it shall show the name of the individual and shall be signed by the individual with the word Individually appearing under the signature. If the individual operates under a firm name, the Master Agreement shall be signed in the name of the individual doing business under the firm name.
- b) If the Master Agreement is by a corporation, the President, Vice President, or Assistant Vice President shall execute it in the name of the corporation. The Secretary or Assistant Secretary shall attest it. The seal of the corporation shall be affixed. If the Master Agreement is executed on behalf of a corporation in any other manner than as above, a certified copy of the minutes of the Board of Directors of said corporation authorizing the manner and style of execution and the authority of the person executing shall be attached to the Master Agreement or shall be on file with the Department.
- c) If the Master Agreement is made by a partnership, it shall be executed in the name of the partnership by one of the general partners.
- d) If the Master Agreement is made by a limited liability company, it shall be signed by the manager, member or authorized agent and notarized.
- e) If the Master Agreement is a joint venture, it shall be executed by each member of the joint venturers in the appropriate manner set out above. In addition, the execution by the joint venturers shall appear below their names.

The Master Agreement execution shall be notarized by a notary public whose commission is in effect on the date of execution. Such notarization shall be applicable to the Master Agreement.

**EXECUTION OF MASTER AGREEMENT
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

CORPORATION

The Contractor declares (or certifies, verifies, or states) under penalty of perjury under the laws of the United States that neither he, nor any official, agent or employee has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this Master Agreement, that the Contractor has not been convicted of violating N.C.G.S. § 133-24 within the last three years, and that the Contractor intends to do the work with its own bona fide employees or subcontractors and did not bid for the benefit of another contractor.

By submitting this Execution of Master Agreement, non-collusion, debarment and gift ban certification, the Contractor is certifying his status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

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

SIGNATURE OF CONTRACTOR

Branch Civil, Inc.

Full name of Corporation

3635 Peters Creek Road, Roanoke, Virginia 24019

Address as prequalified

Attest

Chief Legal Officer

Jeffrey M. Bourne

Print or type Signer's name

By

Sr. Vice President

Brian J. Evans

Print or type Signer's name

CORPORATE SEAL



DEBARMENT CERTIFICATION

Conditions for certification:

1. The prequalified bidder shall provide immediate written notice to the Department if at any time the bidder learns that his certification was erroneous when he submitted his debarment certification or explanation that is file with the Department, or has become erroneous because of changed circumstances.
2. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. A copy of the Federal Rules requiring this certification and detailing the definitions and coverages may be obtained from the Contract Officer of the Department.
3. The prequalified bidder agrees by submitting this form, that he will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in NCDOT contracts, unless authorized by the Department.
4. For Federal Aid projects, the prequalified bidder further agrees that by submitting this form he will include the Federal-Aid Provision titled *Required Contract Provisions Federal-Aid Construction Contract (Form FHWA PR 1273)* provided by the Department, without subsequent modification, in all lower tier covered transactions.
5. The prequalified bidder may rely upon a certification of a participant in a lower tier covered transaction that he is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless he knows that the certification is erroneous. The bidder may decide the method and frequency by which he will determine the eligibility of his subcontractors.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except as authorized in paragraph 6 herein, the Department may terminate any contract if the bidder knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available by the Federal Government.

DEBARMENT CERTIFICATION

The prequalified bidder certifies to the best of his knowledge and belief, that he and his principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph b. of this certification; and
- d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- e. Will submit a revised Debarment Certification immediately if his status changes and will show in his bid proposal an explanation for the change in status.

If the prequalified bidder cannot certify that he is not debarred, he shall provide an explanation with this submittal. An explanation will not necessarily result in denial of participation in a contract.

Failure to submit a non-collusion affidavit and debarment certification will result in the prequalified bidder's bid being considered non-responsive.

☐ Check here if an explanation is attached to this certification.

Contract No.: **C 205150**

County: **Yancey County**

ACCEPTED BY THE
DEPARTMENT OF TRANSPORTATION

Signed by:

Colin A. Justice

1889E4C5ADF14AE...

Contract Officer

12/17/2025

Date

Execution of Contract
Approved as to Form:

Signed by:

Ronald E. Davenport, Jr.

52C46046381F443...

Attorney General

Signature Sheet (Bid - Acceptance by Department)

Contract No. C205150
County Yancey

Rev 10-31-24

Bond Numbers:
Hartford Fire Insurance Company - 44BCSJ19713
Berkshire Hathaway Specialty Insurance Company - 47-SUR-300171-01-0099

CONTRACT PAYMENT BOND

Date of Payment Bond Execution November 20, 2025

Name of Principal Contractor Branch Civil, Inc., 3635 Peters Creek Road, Roanoke, VA 24019
Hartford Fire Insurance Company, One Hartford Plaza, Hartford, CT 06155

Name of Surety: Berkshire Hathaway Specialty Insurance Company, 1314 Douglas Street, Suite 1400, Omaha, NE 68102

Name of Contracting Body: North Carolina Department of Transportation
Raleigh, North Carolina

Amount of Bond: Nine Hundred Eighty-Seven Thousand Seven Hundred Seventy-One Dollars and 00/100 (\$987,771.00)

Contract ID No.: C205150

County Name: Yancey

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

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

NOW THEREFORE, if the principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

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

Contract No.
County

C205150

Yancey

Rev 10-31-24

CONTRACT PAYMENT BOND

Hartford Fire Insurance Company

NAIC #19682

Berkshire Hathaway Specialty Insurance Company

NAIC #20044

Print or type Surety Company Name NAIC #

Affix Seal of Surety Company



By Jaclyn Maffey, Attorney-in-Fact

Print, stamp or type name of Attorney-in-Fact

J. Maffey

Signature of Attorney-in-Fact

M. Kased

Signature of Witness

Mariam Kased, Witness to Surety

Print or type Signer's name

One Hartford Plaza, Hartford, CT 06155

1314 Douglas Street, Suite 1400, Omaha, NE 68102

Address of Attorney-in-Fact

Contract No.
County

C205150
Yancey

Rev. 10-31-24

CONTRACT PAYMENT BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

Branch Civil, Inc.

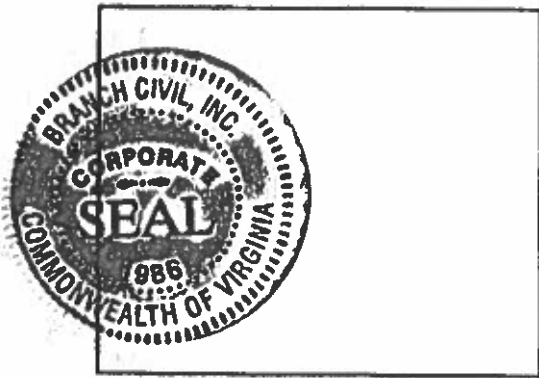
Full name of Corporation

3635 Peter's Creek Rd, Roanoke, VA 24019

Address as prequalified

By

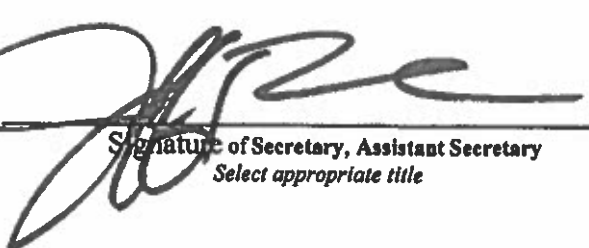

Signature of President, Vice President, Assistant Vice President
Select appropriate title



Affix Corporate Seal

MICHAEL GILBERT
Print or type Signer's name

Attest


Signature of Secretary, Assistant Secretary
Select appropriate title

JEFF BOURNE
Print or type Signer's name

Contract No. C205150
County Yancey

Rev. 10-31-24

Bond Numbers:
Hartford Fire Insurance Company - 44BCSJ19713
Berkshire Hathaway Specialty Insurance Company - 47-SUR-300171-01-0099

CONTRACT PERFORMANCE BOND

Date of Performance Bond Execution: November 20, 2025

Name of Principal Contractor: Branch Civil, Inc., 3635 Peters Creek Road, Roanoke, VA 24019
Hartford Fire Insurance Company, One Hartford Plaza, Hartford, CT 06155

Name of Surety: Berkshire Hathaway Specialty Insurance Company, 1314 Douglas Street, Suite 1400, Omaha, NE 68102

Name of Contracting Body: North Carolina Department of Transportation
Raleigh, North Carolina

Amount of Bond: Nine Hundred Eighty-Seven Thousand Seven Hundred Seventy-One Dollars and 00/100 (\$987,771.00)

Contract ID No.: C205150

County Name: Yancey

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

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

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

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

Contract No.
County

C205150

Yancey

Rev. 10-31-24

CONTRACT PERFORMANCE BOND

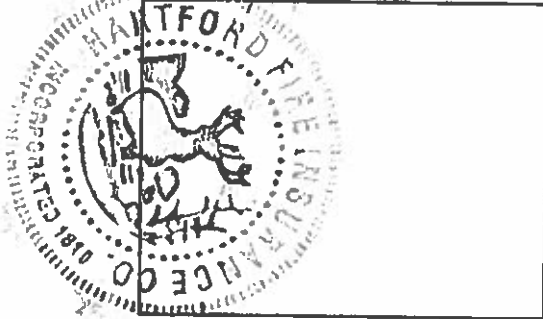
Hartford Fire Insurance Company

NAIC #19682

Berkshire Hathaway Specialty Insurance Company NAIC #20044

Print or type Surety Company Name NAIC #

Affix Seal of Surety Company



By Jaclyn Maffey, Attorney-in-Fact

Print, stamp or type name of Attorney-in-Fact



Signature of Attorney-in-Fact

Signature of Witness

Mariam Kased, Witness to Surety

Print or type Signer's name

One Hartford Plaza, Hartford, CT 06155

1314 Douglas Street, Suite 1400, Omaha, NE 68102

Address of Attorney-in-Fact

Contract No.
County

C205150

Yancey

Rev. 10-31-24

CONTRACT PERFORMANCE BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

Branch Civil, Inc.

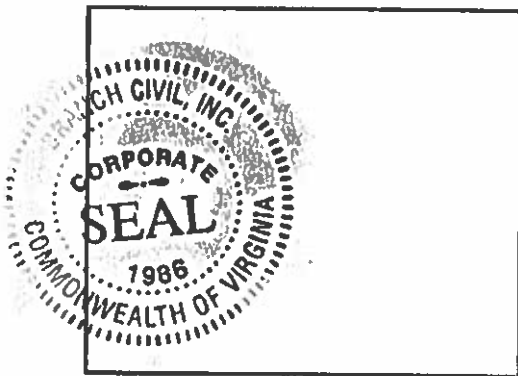
Full name of Corporation

3635 Peter's Creek Rd, Roanoke, VA 24019

Address as prequalified

By

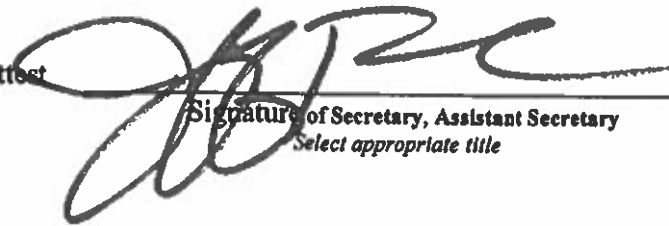

Signature of President, Vice President, Assistant Vice President
Select appropriate title



Affix Corporate Seal

MICHAEL COLBERT
Print or type Signer's name

Attest


Signature of Secretary, Assistant Secretary
Select appropriate title

JEFF BOURNE

Print or type Signer's name

POWER OF ATTORNEY

Direct Inquiries, Bond Authenticity
and Claims to:
THE HARTFORD
BOND, T-14
One Hartford Plaza
Hartford, Connecticut 06155
Bond.Claims@thehartford.com
call: 866-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: AMERICAN GLOBAL LLC
Agency Code: 36-215890

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☒ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☒ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of Unlimited :

Andrea E. Gorbett, Mariya Leonidov of Jericho NY, Ryan Gray, Jaclyn Maffey, Marisol Mojica, Andrea Moran, Krystal L. Stravato, Kevin T. Walsh, Jr., Dipal Savaliya of Whippany NJ, Nick Bokios, Diana Baker of Schaumburg IL, Ricardo Davila, William Greffe Griffin, Michael Marino, Torre Taylor of PLANTATION, Florida

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Phyllis A. Clark

Phyllis A. Clark, Assistant Secretary

Joelle L. LaPierre

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA

COUNTY OF SEMINOLE

ss. Lake Mary

On this 1st day of March, 2024, before me personally came Joelle L. LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.

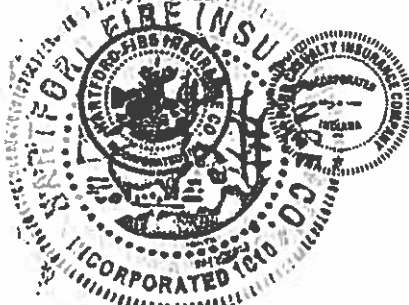


Mariluz Arce

Mariluz Arce
My Commission HH 287363
Expires July 13, 2026

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of November 20, 2025.

Signed and sealed in Lake Mary, Florida.



Keith D. Dozois

Keith D. Dozois, Assistant Vice President

Power Of Attorney
BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY
NATIONAL INDEMNITY COMPANY / NATIONAL LIABILITY & FIRE INSURANCE COMPANY

Know all men by these presents, that **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at One Lincoln Street, 23rd Floor, Boston, Massachusetts 02111, **NATIONAL INDEMNITY COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 3024 Harney Street, Omaha, Nebraska 68131 and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Connecticut and having an office at 100 First Stamford Place, Stamford, Connecticut 06902 (hereinafter collectively the "Companies"), pursuant to and by the authority granted as set forth herein, do hereby name, constitute and appoint: Adlyn Maffey, Kevin T. Walsh, Jr., Thomas MacDonald, Krystal L. Stravato, Andrew Moran, Ryan Gray, Dipal Savaliya, 100 South Jefferson Road, Suite 101, of the city of Whippany, State of New Jersey, their true and lawful attorney(s)-in-fact to make, execute, seal, acknowledge, and deliver, for and on their behalf as surety and as their act and deed, any and all undertakings, bonds, or other such writings obligatory in the nature thereof, in pursuance of these presents, the execution of which shall be as binding upon the Companies as if it has been duly signed and executed by their regularly elected officers in their own proper persons. This authority for the Attorney-in-Fact shall be limited to the execution of the attached bond(s) or other such writings obligatory in the nature thereof.

In witness whereof, this Power of Attorney has been subscribed by an authorized officer of the Companies, and the corporate seals of the Companies have been affixed hereto this date of August 24, 2023. This Power of Attorney is made and executed pursuant to and by authority of the Bylaws, Resolutions of the Board of Directors, and other Authorizations of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, **NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, which are in full force and effect, each reading as appears on the back page of this Power of Attorney, respectively. The following seals of the Companies and signatures by an authorized officer of the Company may be affixed by facsimile or digital format, which shall be deemed the equivalent of and constitute the written signature of such officer of the Companies and original seals of the Companies for all purposes regarding this Power of Attorney, including satisfaction of any signature and seal requirements on any and all undertakings, bonds, or other such writings obligatory in the nature thereof, to which this Power of Attorney applies.

**BERKSHIRE HATHAWAY SPECIALTY
INSURANCE COMPANY,**



By:

David Fields, Executive Vice President



**NATIONAL INDEMNITY COMPANY,
NATIONAL LIABILITY & FIRE INSURANCE COMPANY,**



By:

David Fields, Vice President

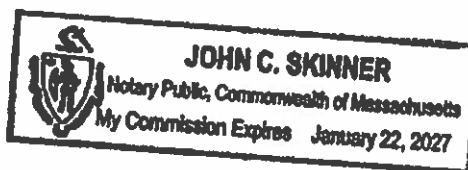


NOTARY

State of Massachusetts, County of Suffolk, ss:

On this 24th day of August, 2023, before me appeared David Fields, Executive Vice President of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY** and Vice President of **NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, who being duly sworn, says that his capacity is as designated above for such Companies; that he knows the corporate seals of the Companies; that the seals affixed to the foregoing instrument are such corporate seals; that they were affixed by order of the board of directors or other governing body of said Companies pursuant to its Bylaws, Resolutions and other Authorizations, and that he signed said instrument in that capacity of said Companies.

[Notary Seal]



Notary Public

I, Ralph Tortorella, the undersigned, Officer of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, **NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies which is in full force and effect and has not been revoked. IN TESTIMONY WHEREOF, see hereunto affixed the seals of said Companies this November 20, 2023.



 Ralph Tortorella, Officer

Appendix A – Preconstruction Agreement(s)

Preconstruction Agreement	Date Executed	Cost Plus or Lump Sum	Amount (\$)

Appendix B – Preconstruction Agreement Amendment(s)

Preconstruction Agreement Amendment	Date Executed	Cost Plus or Lump Sum	Amount (\$)

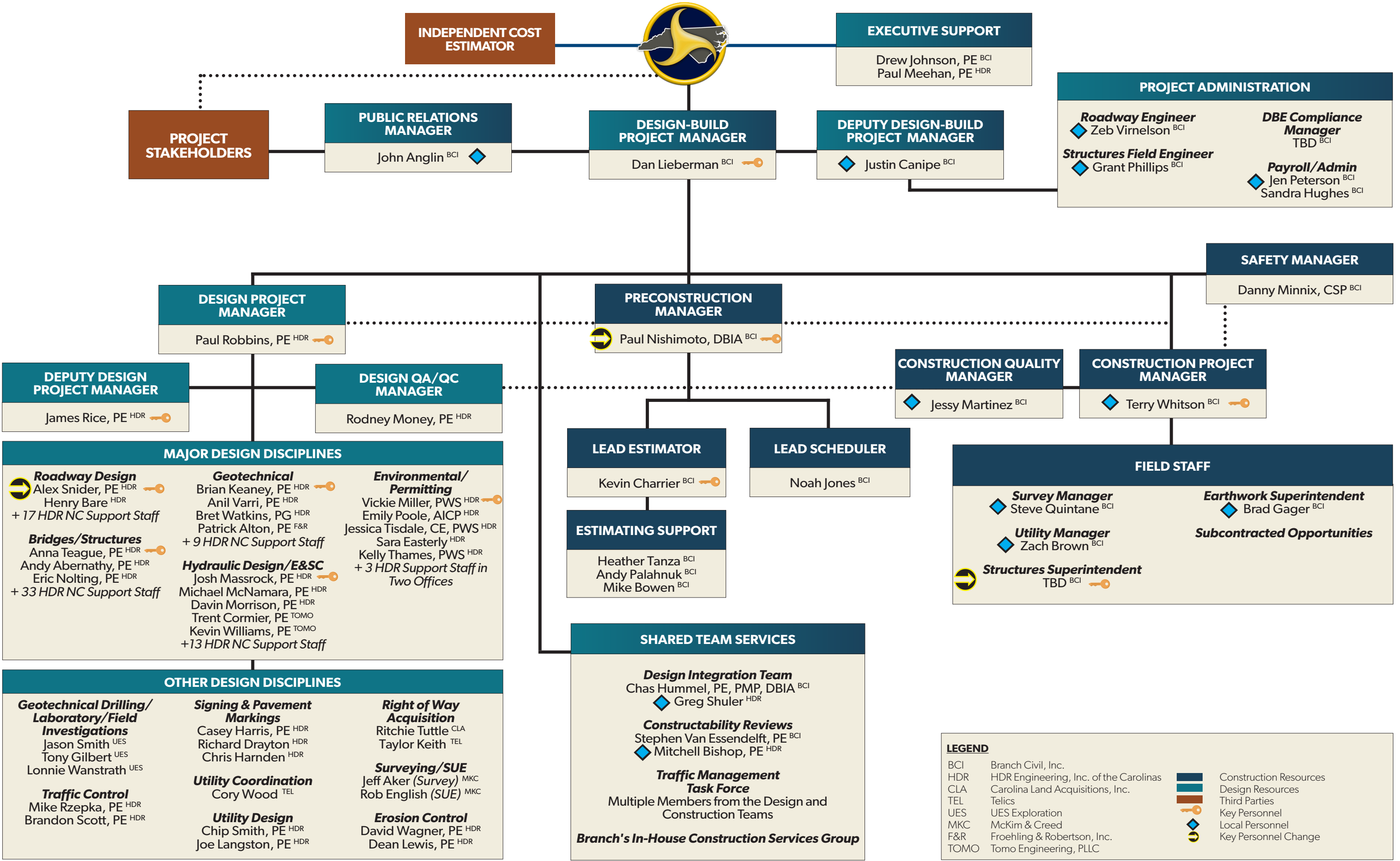
Appendix C – Construction Contract and Supplemental Agreement(s)

[illegible]

Appendix D – Early Work Package(s) and Supplemental Agreement(s)

[illegible]

Appendix E – Design-Build Team Organization Chart



This organization chart is to provide general information purposes only and is subject to change based on the timeliness and scope of this PDB Contract.

Appendix F – Fuel Usage Factor Chart and Estimate of Quantities Sheet

CONTRACT NUMBER	CONTRACTOR NAME	HiCAMS VENDOR NUMBER	COUNTY
C205150	Branch Civil, Inc.	3697	Yancey

FUEL USAGE FACTOR CHART AND ESTIMATE OF QUANTITIES

Description of Work	Units	Fuel Usage Factor Diesel #2	Estimate of Quantities
Unclassified Excavation	Gal / CY	0.29	_____ CY
Borrow Excavation	Gal / CY	0.29	_____ CY
Class IV Subgrade Stabilization	Gal / Ton	0.55	_____ Tons
Aggregate Base Course			
Sub-Ballast			
Aggregate for Cement Treated Base Course			
Portland Cement for Cement Treated Base Course	Gal / Ton	0.55	_____ Tons
* Asphalt Concrete Base Course	Gal / Ton	☐ 0.90 ☐ 2.90	_____ Tons
* Asphalt Concrete Intermediate Course	Gal / Ton	☐ 0.90 ☐ 2.90	_____ Tons
* Asphalt Concrete Surface Course	Gal / Ton	☐ 0.90 ☐ 2.90	_____ Tons
* Open-Graded Asphalt Friction Course	Gal / Ton	☐ 0.90 ☐ 2.90	_____ Tons
* Permeable Asphalt Drainage Course	Gal / Ton	☐ 0.90 ☐ 2.90	_____ Tons
* Sand Asphalt Surface Course, Type SA-1	Gal / Ton	☐ 0.90 ☐ 2.90	_____ Tons
Portland Cement Concrete Pavement	Gal / SY		
Through Lanes and Shoulders (> 11")			
Through Lanes and Shoulders (9" to 11")			
Through Lanes and Shoulders (< 9")			
** Structural Concrete (Cast-in-Place Only)	Gal / CY	0.98	_____ CY

* Select 0.90 **OR** 2.90

** Structural Concrete shall be defined as cast-in-place Class A or Class AA concrete used in the construction of major structures for various work items identified in Division 4 of the *Standard Specifications*.

☐ The above quantities represent a reasonable estimate of the total quantities anticipated, for each item, as pertaining to fuel price adjustments, and is representative of the design proposed.

Or

☐ The Design-Build Team elects not to pursue reimbursement for Fuel Price Adjustments on this project.

Enter the Total Construction Cost Amount: \$ _____

Appendix G – Listing of DBE Subcontractors

LISTING OF DBE SUBCONTRACTORS						Sheet _____ of _____
Firm Name and Address		Item No.	Item Description	* Agreed upon Unit Price	** Dollar Volume of Item	
Name						
Address						
Name						
Address						
Name						
Address						
Name						
Address						
Name						
Address						
Name						
Address						

LISTING OF DBE SUBCONTRACTORS				
Firm Name and Address		Item No.	Item Description	* Agreed upon Unit Price
				** Dollar Volume of Item
Name				
Address				
Name				
Address				
Name				
Address				
Name				
Address				

COST OF CONSTRUCTION WORK ONLY \$ _____

*The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract. ** Dollar Volume of DBE Subcontractor \$ _____
Percentage of Total Construction Cost _____ %

(Including Right of Way Acquisition Services)

** - Must have entry even if figure to be entered is zero.

** - *If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent.*
If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.

Bidders with no DBE participation must so indicate this on the form by entering the word or number zero.

Appendix H – Surety Letter(s)



Berkshire Hathaway
Specialty Insurance

November 7, 2025

NCDOT Division 13
Colby Justice
901-8 Old Mars Hill Hwy
Weaverville, NC 28787

Re: Branch Civil, Inc.

Project: STIP Number M-0572F, WBS Number 18313.1100998.1.2, Federal Aid Number ER24385, Yancey County- US 19W South Progressive Design Build

Dear Sir or Madam:

It has been the privilege of American Global LLC and Hartford Fire Insurance Company and Berkshire Hathaway Specialty Insurance Company to provide surety bonds on behalf of Branch Civil, Inc., a subsidiary of The Branch Group. In our opinion, Branch Civil, Inc. remains properly financed, well equipped, and capably managed.

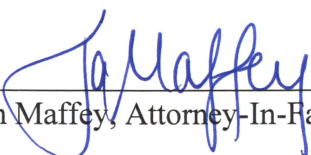
At the present time, Hartford Fire Insurance Company and Berkshire Hathaway Specialty Insurance Company provide a \$350,000,000.00 single project / \$2,000,000,000.00 aggregate surety program to Branch Civil, Inc. As always, Hartford Fire Insurance Company and Berkshire Hathaway Specialty Insurance Company reserves the right to perform normal underwriting at the time of any bond request, including, without limitation, prior review and approval of relevant contract documents, bond forms, and project financing. We assume no liability to your or any of your affiliates if for any reason we do not execute such bonds.

Hartford Fire Insurance Company is listed on the U.S. Treasury Department's Listing of Approved Sureties (Department Circular 570) and is rated A+, XV by A.M. Best Company.

Berkshire Hathaway Specialty Insurance Company is listed on the U.S. Treasury Department's Listing of Approved Sureties (Department Circular 570) and is rated A+ XV by A.M. Best Company.

Very truly yours,

Hartford Fire Insurance Company
Berkshire Hathaway Specialty Insurance Company


Jaclyn Maffey, Attorney-In-Fact



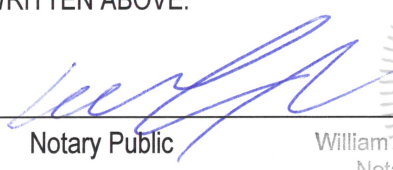
ACKNOWLEDGEMENT OF SURETY COMPANY

STATE OF New Jersey

COUNTY OF Morris

ON THE 7th DAY OF November, 2025 BEFORE ME PERSONALLY APPEARED Jaclyn Maffey TO ME KNOWN, WHO BEING BY ME DULY SWORN, DID DEPOSE AND SAY; THAT (S)HE IS THE ATTORNEY-IN-FACT OF Hartford Fire Insurance Company and Berkshire Hathaway Specialty Insurance Company THE CORPORATIONS THAT EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SUCH CORPORATIONS EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL, AT MY OFFICE IN THE ABOVE COUNTY, THE DAY AND YEAR WRITTEN ABOVE.



Notary Public

William A. Drayton Jr.
Notary Public

State of New Jersey
My commission expires April 9, 2026

POWER OF ATTORNEY

**Direct Inquiries, Bond Authenticity
and Claims to:**
THE HARTFORD
BOND, T-14
One Hartford Plaza
Hartford, Connecticut 06155
Bond.Claims@thehartford.com
call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: AMERICAN GLOBAL LLC
Agency Code: 36-215890

- ☒ **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- ☒ **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- ☒ **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- ☐ **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of** Unlimited :
Andrea E. Gorbett, Mariya Leonidov of Jericho NY, Ryan Gray, Jaclyn Maffey, Marisol Mojica, Andreah Moran, Krystal L. Stravato, Kevin T. Walsh, Jr., Dipal Savaliya of Whippany NJ, Nick Bokios, Diana Baker of Schaumburg IL, Ricardo Davila, William Greffe Griffin, Michael Marino, Torre Taylor of PLANTATION, Florida
their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Phyllis A. Clark

Phyllis A. Clark, Assistant Secretary

Joelle L. LaPierre

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA

COUNTY OF SEMINOLE

SS. Lake Mary

On this 1st day of March, 2024, before me personally came Joelle L. LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.



Mariluz Arce

Mariluz Arce
My Commission HH 287363
Expires July 13, 2026

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of November 7, 2025.

Signed and sealed in Lake Mary, Florida.



Keith D. Dozois

Keith D. Dozois, Assistant Vice President

Power Of Attorney**BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY
NATIONAL INDEMNITY COMPANY / NATIONAL LIABILITY & FIRE INSURANCE COMPANY**

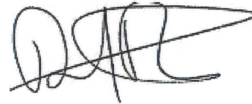
Know all men by these presents, that **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at One Lincoln Street, 23rd Floor, Boston, Massachusetts 02111, **NATIONAL INDEMNITY COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 3024 Harney Street, Omaha, Nebraska 68131 and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Connecticut and having an office at 100 First Stamford Place, Stamford, Connecticut 06902 (hereinafter collectively the "Companies"), pursuant to and by the authority granted as set forth herein, do hereby name, constitute and appoint: **Jaclyn Maffey, Kevin T. Walsh, Jr., Thomas MacDonald, Krystal L. Stravato, Andreah Moran, Ryan Gray, Dipal Savaliya, 100 South Jefferson Road, Suite 101, of the city of Whippany, State of New Jersey**, their true and lawful attorney(s)-in-fact to make, execute, seal, acknowledge, and deliver, for and on their behalf as surety and as their act and deed, any and all undertakings, bonds, or other such writings obligatory in the nature thereof, in pursuance of these presents, the execution of which shall be as binding upon the Companies as if it has been duly signed and executed by their regularly elected officers in their own proper persons. **This authority for the Attorney-in-Fact shall be limited to the execution of the attached bond(s) or other such writings obligatory in the nature thereof.**

In witness whereof, this Power of Attorney has been subscribed by an authorized officer of the Companies, and the corporate seals of the Companies have been affixed hereto this date of August 24, 2023. This Power of Attorney is made and executed pursuant to and by authority of the Bylaws, Resolutions of the Board of Directors, and other Authorizations of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, which are in full force and effect, each reading as appears on the back page of this Power of Attorney, respectively. **The following seals of the Companies and signatures by an authorized officer of the Company may be affixed by facsimile or digital format, which shall be deemed the equivalent of and constitute the written signature of such officer of the Companies and original seals of the Companies for all purposes regarding this Power of Attorney, including satisfaction of any signature and seal requirements on any and all undertakings, bonds, or other such writings obligatory in the nature thereof, to which this Power of Attorney applies.**

**BERKSHIRE HATHAWAY SPECIALTY
INSURANCE COMPANY,**

By:

David Fields, Executive Vice President

**NATIONAL INDEMNITY COMPANY,
NATIONAL LIABILITY & FIRE INSURANCE COMPANY,**

By:

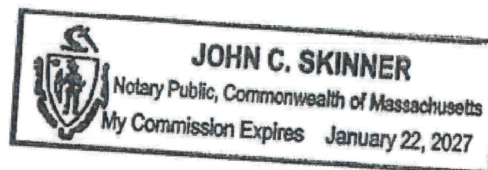
David Fields, Vice President

**NOTARY**

State of Massachusetts, County of Suffolk, ss:

On this 24th day of August, 2023, before me appeared David Fields, Executive Vice President of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY** and Vice President of **NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, who being duly sworn, says that his capacity is as designated above for such Companies; that he knows the corporate seals of the Companies; that the seals affixed to the foregoing instrument are such corporate seals; that they were affixed by order of the board of directors or other governing body of said Companies pursuant to its Bylaws, Resolutions and other Authorizations, and that he signed said instrument in that capacity of said Companies.

[Notary Seal]



Notary Public

I, Ralph Tortorella, the undersigned, Officer of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies which is in full force and effect and has not been revoked. IN TESTIMONY WHEREOF, see hereunto affixed the seals of said Companies this November 7, 2025.



Ralph Tortorella, Officer

To verify the authenticity of this Power of Attorney please contact us at: BHSI Surety Department, Berkshire Hathaway Specialty Insurance Company, One Lincoln Street, 23rd Floor Boston, MA 02111 | (770) 625-2516 or by email at Jennifer.Porter@bhspecialty.com THIS POWER OF ATTORNEY IS VOID IF ALTERED

To notify us of a claim please contact us on our 24-hour toll free number at (855) 453-9675, via email at claims@bhspecialty.com, via fax to (617) 507-8259, or via mail.

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY (BYLAWS)

ARTICLE V.

CORPORATE ACTIONS

....

EXECUTION OF DOCUMENTS:

....

Section 6.(b) The President, any Vice President or the Secretary, shall have the power and authority:

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company bonds and other undertakings, and
- (2) To remove at any time any such Attorney-in-fact and revoke the authority given him.

NATIONAL INDEMNITY COMPANY (BY-LAWS)

Section 4. Officers, Agents, and Employees:

A. The officers shall be a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers none of whom shall be required to be shareholders or Directors and each of whom shall be elected annually by the Board of Directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the Board of Directors, and shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the Board of Directors; and the Board of Directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the corporation.

NATIONAL INDEMNITY COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BY-LAWS)

ARTICLE IV

Officers

Section 1. Officers, Agents and Employees:

A. The officers shall be a president, one or more vice presidents, one or more assistant vice presidents, a secretary, one or more assistant secretaries, a treasurer, and one or more assistant treasurers, none of whom shall be required to be shareholders or directors, and each of whom shall be elected annually by the board of directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the board of directors. The president and secretary shall be different individuals. Election or appointment of an officer or agent shall not create contract rights. The officers of the Corporation shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the board of directors; and the board of directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the Corporation.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut

Financial Statement, December 31, 2024

Statutory Basis

ASSETS

U.S. Government Bonds	\$ 548,689,389
Bonds of Other Governments	176,613,593
State, County and Municipal Bonds	1,086,274,087
Miscellaneous Bonds	6,611,928,546
Stocks	5,985,304,899
Short Term Investments	54,038,852
	<u>\$ 14,462,849,366</u>
Real Estate	\$ 283,466,249
Cash	68,685,525
Agents' Balances (Under 90 Day)	4,015,475,979
Other Invested Assets	4,887,481,789
Miscellaneous	4,495,822,980
Total Admitted Assets	<u>\$ 28,213,781,888</u>

LIABILITIES

Reserve for Claims	\$	
and Claim Expense.....		11,735,400,585
Reserve for Unearned Premiums		2,853,522,077
Reserve for Taxes, License		
and Fees		46,650,892
Miscellaneous Liabilities		1,078,283,636
Total Liabilities	\$	<u>15,713,857,190</u>
Capital Paid In	\$	55,320,000
Surplus		<u>12,444,604,698</u>
Surplus as regards Policyholders.....	\$	<u>12,499,924,698</u>
Total Liabilities, Capital		
and Surplus	\$	<u>28,213,781,888</u>

STATE OF FLORIDA
SEMINOLE COUNTY
CITY OF LAKE MARY

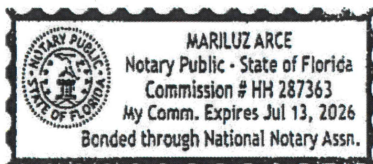
} ss.

Joelle L. LaPierre, Assistant Vice President and Phyllis A. Clark, Assistant Secretary of the Hartford Fire Insurance Company, being duly sworn, each deposes and say that the foregoing is a true and correct statement of the said company's financial condition as of December 31, 2024.

Subscribed and sworn to before me this
11th day of March, 2025.

Mariluz Arce

Notary Public



Joelle L. LaPierre
Joelle L. LaPierre, Assistant Vice President

Phyllis A. Clark
Phyllis A. Clark, Assistant Secretary

General Correspondence

**BERKSHIRE HATHAWAY SPECIALTY
INSURANCE COMPANY**

1314 Douglas Street, Suite 1400, Omaha, Nebraska 68102-1944

ADMITTED ASSETS*

	<u>12/31/2024</u>	<u>12/31/2023</u>	<u>12/31/2022</u>
Total invested assets	\$ 7,425,803,196	\$ 6,702,817,810	\$ 5,680,246,430
Premium & agent balances (net)	635,096,365	690,388,245	582,469,494
All other assets	224,603,005	204,404,036	217,334,073
Total Admitted Assets	<u><u>\$ 8,285,502,566</u></u>	<u><u>\$ 7,597,610,091</u></u>	<u><u>\$ 6,480,049,997</u></u>

LIABILITIES & SURPLUS*

	<u>12/31/2024</u>	<u>12/31/2023</u>	<u>12/31/2022</u>
Loss & loss exp. unpaid	\$ 2,023,746,631	\$ 1,825,674,253	\$ 1,495,870,171
Unearned premiums	583,593,113	604,899,743	536,797,683
All other liabilities	1,079,218,932	1,240,939,865	1,065,221,844
Total Liabilities	<u>3,686,558,676</u>	<u>3,671,513,861</u>	<u>3,097,889,698</u>
Total Policyholders' Surplus	<u>4,598,943,890</u>	<u>3,926,096,230</u>	<u>3,382,160,299</u>
Total Liabilities & Surplus	<u><u>\$ 8,285,502,566</u></u>	<u><u>\$ 7,597,610,091</u></u>	<u><u>\$ 6,480,049,997</u></u>

* Assets, liabilities and surplus are presented on a Statutory Accounting Basis as promulgated by the NAIC and/or the laws of the company's domiciliary state.