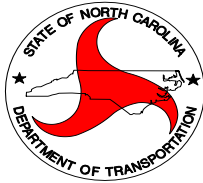


STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION



Division 14

District 1

Small Business Enterprise
Contract

CONTRACT: DN01074
TIP Number: N/A
FEDERAL: STATE FUNDED
WBS Element: 34473.3.6
LOCATION: ALONG NC-191 (HAYWOOD RD) FROM SR 1381
(MOUNTAIN RD) TO NC-280 IN HENDERSON COUNTY
COUNTY: HENDERSON
DESCRIPTION: TREE CLEARING OPERATIONS ALONG NC-191
(HAYWOOD RD) FROM SR 1381 (MOUNTAIN RD) TO NC-
280 IN HENDERSON COUNTY

Contractor: South Mountain Land Works LLC
Address: 7398 Corn Hill Road
Connelly Springs, NC 28612

Division Engineer: Wanda Payne, P.E.
District Engineer: Troy Wilson, P.L.S.
Assistant Resident Engineer: Patrick Eubanks

Letting Date: 1/28/2025

Contract Execution: 02/25/2025

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION 14

SMALL BUSINESS ENTERPRISE PROPOSAL

DATE AND TIME OF BID OPENING: JANUARY 28, 2025 AT 2:00 PM

CONTRACT ID: DN01074

WBS ELEMENT NO.: 34473.3.6

FEDERAL AID NO.: STATE FUNDED

COUNTY: HENDERSON

TIP NO.: R-2588BA

MILES: 0

ROUTE NO.: NC-191 (HAYWOOD RD)

LOCATION: ALONG NC-191 (HAYWOOD RD) FROM SR 1381 (MOUNTAIN RD) TO NC-280 IN HENDERSON COUNTY

TYPE OF WORK: TREE CLEARING OPERATIONS

NOTICE:

UNDER THE PROVISIONS OF THIS PROGRAM, A N.C. GENERAL CONTRACTOR'S LICENSE IS NOT REQUIRED AND CONTRACT PAYMENT AND CONTRACT PERFORMANCE BONDS ARE NOT REQUIRED. BIDDERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS, INCLUDING BUT NOT LIMITED TO, THOSE REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA.

THIS IS A ROADWAY PROJECT.

BID BOND IS NOT REQUIRED.

South Mountain Land Works LLC

NAME OF BIDDER

7398 Corn Hill Road Connelly Springs, NC 28612

ADDRESS OF BIDDER

**PROPOSAL FOR THE CONSTRUCTION OF
CONTRACT No. DN01074 IN HENDERSON COUNTY, NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION,
RALEIGH, NORTH CAROLINA**

The Bidder has carefully examined the location of the proposed work to be known as Contract No. **DN01074**; has carefully examined the plans and specifications, which are acknowledged to be part of the proposal, the special provisions, the proposal, the form of contract; and thoroughly understands the stipulations, requirements and provisions. The undersigned bidder agrees to be bound upon his execution of the bid and subsequent award to him by the Department of Transportation in accordance with this proposal. Payment and performance bonds are not required on this project. The undersigned Bidder further agrees to provide all necessary machinery, tools, labor, and other means of construction; and to do all the work and to furnish all materials, except as otherwise noted, necessary to perform and complete the said contract in accordance with the *2024 Standard Specifications for Roads and Structures* by the dates(s) specified in the Project Special Provisions and in accordance with the requirements of the Engineer, and at the unit or lump sum prices, as the case may be, for the various items given on the sheets contained herein.

The Bidder shall provide and furnish all the materials, machinery, implements, appliances and tools, and perform the work and required labor to construct and complete Contract No. **DN01074** in **Henderson County**, for the unit or lump sum prices, as the case may be, bid by the Bidder in his bid and according to the proposal, plans, and specifications prepared by said Department, which proposal, plans, and specifications show the details covering this project, and hereby become a part of this contract.

The published volume entitled *North Carolina Department of Transportation, Raleigh, Standard Specifications for Roads and Structures, January 2024* with all amendments and supplements thereto, is by reference incorporated into and made a part of this contract; that, except as herein modified, all the construction and work included in this contract is to be done in accordance with the specifications contained in said volume, and amendments and supplements thereto, under the direction of the Engineer.

If the proposal is accepted and the award is made, the contract is 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 over the signature of the said Contract Officer or Division Engineer.

The quantities shown in the itemized proposal for the project are considered to be approximate only and are given as the basis for comparison of bids. The Department of Transportation may increase or decrease the quantity of any item or portion of the work as may be deemed necessary or expedient.

An increase or decrease in the quantity of an item will not be regarded as sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for the contract.



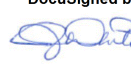
DocuSigned by:

29BD93827CF24F6...
02/18/2025

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INSTRUCTIONS TO BIDDERS

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

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

TRADITIONAL PAPER BIDS:

1. Small Business Enterprise bidders shall submit a SBE Application for Certification Form within the NC Online Certification System on the Department's website and have been approved by the Office of Civil Rights prior to bidding. The SBE shall submit this form for approval at a minimum of one week prior to bidding.
2. Download the entire proposal from the Connect NCDOT website and return the entire proposal with your bid.
3. In accordance with Article 102-3 of the Standard Specifications, registration on the Interested Parties List is required unless SP1 G02 Interested Parties List Not Required provision is included in the proposal.
4. All entries on the itemized proposal sheet (bid form) shall be written in ink or typed.
5. The Bidder shall submit a unit price for every item on the itemized proposal sheet. The unit prices for the various contract items shall be written in figures. Unit prices shall be rounded off by the Bidder to contain no more than FOUR decimal places.
6. An amount bid shall be entered on the itemized proposal sheet for every item. The amount bid for each item shall be determined by multiplying each unit bid by the quantity for that item, and shall be written in figures in the "Amount" column of the form.
7. The total amount bid shall be written in figures in the proper place on the bid form. The total amount bid shall be determined by adding the amounts bid for each item.
8. Changes to any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Bidder shall initial the change in ink. Do not use correction fluid, correction tape or similar product to make corrections.
9. The bid shall be properly executed on the included **Execution of Bid – Non-collusion, Debarment and Gift Ban Certification** form. All bids shall show the following information:
 - a. Name of corporation, partnership, Limited Liability Company, joint venture, individual or firm, submitting bid.
Corporations that have a corporate seal shall include it on the bid, otherwise write your corporations name in the seal location.
 - b. Name of individual or representative submitting bid and position or title held on behalf of the bidder.
 - c. Name, signature, and position or title of witness.
10. The bid shall not contain any unauthorized additions, deletions, or conditional bids.
11. The Bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
12. **THE PROPOSAL WITH THE ITEMIZED PROPOSAL SHEET ATTACHED SHALL BE PLACED IN A SEALED ENVELOPE AND SHALL BE DELIVERED TO AND RECEIVED IN THE NCDOT DIVISION OFFICE, LOCATED AT 253 Webster Road Sylva, NC 28779, BY 2:00 PM ON, January 28, 2025.**
13. The sealed bid must display the following statement on the front of the sealed envelope:

QUOTATION FOR – CONTRACT ID DN01074 – TREE CLEARING OPERATIONS ALONG NC-191 (HAYWOOD RD) FROM SR 1381 (MOUNTAIN RD) TO NC-280 IN HENDRSON COUNTY TO BE OPENED AT 2:00 PM ON, January 28, 2025.

As well as the following information:

- a. Name of corporation, partnership, Limited Liability Company, joint venture, individual or firm, submitting bid.
- b. Name of individual or representative submitting bid and position or title held on behalf of the bidder.

- c. Address of corporation, partnership, Limited Liability Company, joint venture, individual or firm, submitting bid.
 - d. SAP Vendor Number of corporation, partnership, Limited Liability Company, joint venture, individual or firm, submitting bid.
 - e. Contractor License Number, if available, of corporation, partnership, Limited Liability Company, joint venture, individual or firm, submitting bid.
14. If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope shall be addressed as follows:

**N. C. DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS, DIVISION 14**

**ATTN: Jeffrey E. Alspaugh, EI
253 Webster Road
Sylva, NC 28779**

15. Questions should be emailed 7 calendar days prior to the bid opening to **Jeffrey E. Alspaugh, EI** at **d14contracts@ncdot.gov**. Contact with any other NCDOT personnel concerning this project is strictly prohibited, unless otherwise noted, and may result in bids being considered non-responsive.

ELECTRONIC BID PREPARATION WITH MANUAL DELIVERY:

1. Small Business Enterprise bidders shall submit a SBE Application for Certification Form within the NC Online Certification System on the Department's website and have been approved by the Office of Civil Rights prior to bidding. The SBE shall submit this form for approval at a minimum of one week prior to bidding.
2. Download the entire proposal and electronic submittal file from the Connect NCDOT website and return the entire proposal with your bid.
3. In accordance with Article 102-3 of the Standard Specifications, registration on the Interested Parties List is required unless SP1 G02 Interested Parties List Not Required provision is included in the proposal.
4. Electronic bidding software necessary for electronic bid preparation may be downloaded from the Bid Express website following the directions at: **<https://connect.ncdot.gov/letting/Pages/SBE-Electronic-Bid-Preparation.aspx>**
5. Bid shall be prepared in electronic submittal file, printed, signed and placed in paper proposal. The electronic submittal file should be saved and emailed to **Jeffrey E. Alspaugh, EI** at **d14contracts@ncdot.gov** after bids have been publicly read.
6. The Bidder shall submit a unit price for every item on the itemized proposal sheet. The unit prices for the various contract items shall be written in figures. Unit prices shall be rounded off by the Bidder to contain no more than FOUR decimal places.
7. Changes to any entry shall be made to the electronic submittal file, reprinted, signed and placed in the paper proposal. The corrected file shall be emailed to **Jeffrey E. Alspaugh, EI** at **d14contracts@ncdot.gov** after bids have been publicly read.
8. The bid shall be properly executed on the included **Execution of Bid – Non-collusion Affidavit, Debarment Certification and Gift Ban Certification** form. All bids shall show the following information:
 - a. Name of corporation, partnership, Limited Liability Company, joint venture, individual or firm, submitting bid.

Corporations that have a corporate seal shall include it on the bid, otherwise write your corporations name in the seal location.
 - b. Name of individual or representative submitting bid and position or title held on behalf of the bidder.
 - c. Name, signature, and position or title of witness.
 - d. Completed attestation by Notary Public

Note: Signer, Witness and Notary Public must be different individuals.
9. The bid shall not contain any unauthorized additions, deletions, or conditional bids.
10. The Bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
11. **THE PROPOSAL WITH THE ITEMIZED PROPOSAL SHEET ATTACHED SHALL BE PLACED IN A SEALED ENVELOPE AND SHALL BE DELIVERED TO AND RECEIVED IN THE NCDOT**

DIVISION OFFICE, LOCATED AT 253 Webster Road Sylva, NC 28779, BY 2:00 PM ON, January 28, 2025.

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QUOTATION FOR – CONTRACT ID DN01074 – TREE CLEARING OPERATIONS ALONG NC-191 (HAYWOOD RD) FROM SR 1381 (MOUNTAIN RD) TO NC-280 IN HENDRSON COUNTY TO BE OPENED AT 2:00 PM ON, January 28, 2025.

13. If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope shall be addressed as shown above in the Traditional Paper Bids option.
14. Questions should be emailed 7 calendar days prior to the bid opening to **Jeffrey E. Alspaugh, EI** at **d14contracts@ncdot.gov**. Contact with any other NCDOT personnel concerning this project is strictly prohibited, unless otherwise noted, and may result in bids being considered non-responsive.

PROJECT SPECIAL PROVISIONS**GENERAL****MANDATORY PRE-BID CONFERENCE (Prequalifying To Bid):**

(7-18-06) (Rev. 3-25-13)

SPD 1-310

In order for all prospective bidders to have an extensive knowledge of the project, all prospective bidders shall attend a mandatory pre-bid conference on Tuesday, January 21, 2025, at 9:00 AM.

Location: **Resident Engineer's Office – Horseshoe
4142 Haywood Rd.
Mills River, NC 28759**

Point of Contact: **Patrick Eubanks**
(828) 891-5367

The pre-bid conference will include a thorough discussion of the plans, contract pay items, special provisions, etc.

Only bidders who have attended and properly registered at the above scheduled pre-bid conference and who have met all other prequalification requirements will be considered prequalified to bid on this project. A bid received from a bidder who has not attended and properly registered at the above scheduled pre-bid conference will not be accepted and considered for award.

Attendance at the pre-bid conference will not meet the requirements of proper registration unless the individual attending has registered at the pre-bid conference in accordance with the following:

- (A) The individual has signed his name on the official roster prior to the above noted time for the beginning of the conference.
- (B) The individual has written in the name and address of the company he or she represents.
- (C) Only one company has been shown as being represented by the individual attending.
- (D) The individual attending is an officer or permanent employee of the company they are representing.

Any individual arriving after the official roster has been received by the Engineer will not be eligible to bid. Attendance at any prior pre-bid conference will not meet the requirement of this provision.

BOND REQUIREMENTS – No Bonds Required

(6-1-16)(Rev. 1-16-24)

SPD 01-420B

The provisions of Articles 102-10 and 103-7 of the *Standard Specifications* are waived for this project. No bonds required.

HAUL ROADS:

(7-16-24)

105

SP1 G04

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 Contractor shall notify the Engineer of any public road proposed for use as a haul road for the project.

CONTRACT TIME AND LIQUIDATED DAMAGES:

(7-1-95) (Rev. 12-18-07)

108

SP1 G10 A

The date of availability for this contract is **February 24, 2025**.

The completion date for this contract is **March 31, 2025**.

Except where otherwise provided by the contract, observation periods required by the contract will not be a part of the work to be completed by the completion date and/or intermediate contract times stated in the contract. The acceptable completion of the observation periods that extend beyond the final completion date shall be a part of the work covered by the performance and payment bonds.

The liquidated damages for this contract are **Six Hundred Dollars (\$ 600.00)** per calendar day.

INTERMEDIATE CONTRACT TIME NUMBER 1 AND LIQUIDATED DAMAGES:

(2-20-07)

108

SP1 G14 A

The Contractor shall complete the required work of installing, maintaining, and removing the traffic control devices for lane closures and restoring traffic to the existing traffic pattern. The Contractor shall not close or narrow a lane of traffic on **ANY ROAD** during the following time restrictions:

DAY AND TIME RESTRICTIONS**MONDAY THRU FRIDAY****7:00 AM TO 8:00 AM****AND****5:00 PM TO 6:00 PM**

In addition, the Contractor shall not close or narrow a lane of traffic on **ANY ROAD**, detain and/or alter the traffic flow on or during holidays, holiday weekends, special events, or any other time when traffic is unusually heavy, including the following schedules:

HOLIDAY AND HOLIDAY WEEKEND LANE CLOSURE RESTRICTIONS

1. For **unexpected occurrence** that creates unusually high traffic volumes, as directed by the Engineer.

2. For **New Year's Day**, between the hours of **4:00 PM** December 31st and **7:00 AM** January 2nd. If New Year's Day is on a Friday, Saturday, Sunday or Monday, then until **7:00 AM** the following Tuesday.
3. For **Easter**, between the hours of **4:00 PM** Thursday and **7:00 AM** Monday.
4. For **Memorial Day**, between the hours of **4:00 PM** Friday and **7:00 AM** Tuesday.
5. For **Independence Day**, between the hours of **4:00 PM** the day before Independence Day and **7:00 AM** the day after Independence Day.

If **Independence Day** is on a Friday, Saturday, Sunday or Monday, then between the hours of **4:00 PM** the Thursday before Independence Day and **7:00 AM** the Tuesday after Independence Day.

6. For **Labor Day**, between the hours of **4:00 PM** Friday and **7:00 AM** Tuesday.
7. For **Thanksgiving Day**, between the hours of **4:00 PM** Tuesday and **7:00 AM** Monday.
8. For **Christmas**, between the hours of **4:00 PM** the Friday before the week of Christmas Day and **7:00 AM** the following Tuesday after the week of Christmas Day.

Holidays and holiday weekends shall include New Year's, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. The Contractor shall schedule his work so that lane closures will not be required during these periods, unless otherwise directed by the Engineer.

The time of availability for this intermediate contract work shall be the time the Contractor begins to install all traffic control devices for lane closures according to the time restrictions listed herein.

The completion time for this intermediate contract work shall be the time the Contractor is required to complete the removal of all traffic control devices for lane closures according to the time restrictions stated above and place traffic in the existing traffic pattern.

The liquidated damages are **Two Hundred Fifty Dollars (\$ 250.00)** per hour.

CONSTRUCTION MORATORIUM:

(1-19-16)

SP1 G18C

No tree cutting will be allowed from **APRIL 1** through **OCTOBER 15** of any year.

NO MAJOR CONTRACT ITEMS:

(2-19-02) (Rev. 8-21-07)

104

SP1 G31

None of the items included in this contract will be major items.

NO SPECIALTY ITEMS:

(7-1-95)(Rev. 1-16-24)

108-6

SP1 G34

None of the items included in this contract will be specialty items (see Article 108-6 of the *Standard Specifications*).

SPECIALTY ITEMS:

(7-1-95)(Rev. 1-16-24)

108-6

SP1 G37

Items listed below will be the specialty items for this contract (see Article 108-6 of the *Standard Specifications*).

Line #**Description**

5-11

Erosion Control

SCHEDULE OF ESTIMATED COMPLETION PROGRESS:

(7-15-08)(Rev. 7-16-24)

108-2

SP1 G58

The Contractor's attention is directed to the Standard Special Provision entitled *Availability of Funds Termination of Contracts* included elsewhere in this proposal. The Department of Transportation's schedule of estimated completion progress for this project as required by that Standard Special Provision is as follows:

<u>Fiscal Year</u>		<u>Progress (% of Dollar Value)</u>
2025	(7/01/24 - 6/30/25)	100% of Total Amount Bid

The Contractor shall also furnish his own progress schedule in accordance with Article 108-2 of the *Standard Specifications*. Any acceleration of the progress as shown by the Contractor's progress schedule over the progress as shown above shall be subject to the approval of the Engineer.

SMALL BUSINESS ENTERPRISE:

(4-19-22)

SP1 G73

This contract let pursuant to the Small Business Enterprise provisions of N.C. General Statute §136-28.10. In accordance with N.C. General Statute §136-28.10, an award in a contract may be for an amount less but shall not exceed \$1,000,000 per year. No payments in excess of this amount will be disbursed, in accordance with the Statute.

RESTRICTIONS ON ITS EQUIPMENT AND SERVICES:

(11-17-20)

SP01 G090

All telecommunications, video or other ITS equipment or services installed or utilized on this project must be in conformance with UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS 2 CFR, § 200.216 **Prohibition on certain telecommunications and video surveillance services or equipment.**

USE OF UNMANNED AIRCRAFT SYSTEM (UAS):

(8-20-19)

SP1 G092

The Contractor 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 *Small UAS Rule*, NC GS 15A-300.2 *Regulation of launch and recovery sites*, NC GS 63-95 *Training required for the operation of unmanned aircraft systems*, NC GS 63-96 *Permit required for commercial operation of unmanned aircraft system*, and NCDOT UAS Policy. The required operator certifications include possessing a current Federal Aviation Administration (FAA) Remote Pilot Certificate, a NC UAS Operator Permit as well as operating a UAS registered with the FAA.

Prior to beginning operations, the Contractor shall complete the NCDOT UAS – Flight Operation Approval Form and submit it to the Engineer for approval. All UAS operations shall be approved by the Engineer prior to beginning the operations.

All contractors or subcontractors operating UAS shall have UAS specific general liability insurance to cover all operations under this contract.

The use of UAS is at the Contractor's discretion. No measurement or payment will be made for the use of UAS. In the event that the Department directs the Contractor to utilize UAS, payment will be in accordance with Article 104-7 Extra Work.

EQUIPMENT IDLING GUIDELINES:

(1-19-21)

107

SP1 G096

Exercise reduced fuel consumption and reduced equipment emissions during the construction of all work associated with this contract. Employees engaged in the construction of this project should turn off vehicles when stopped for more than thirty (30) minutes and off-highway 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 is in safe operating condition.
3. Idling for testing, servicing, repairing or diagnostic purposes.
4. Idling necessary to accomplish work for which the vehicle 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.
8. Idling when the propulsion engine is providing auxiliary power for other than heating or air conditioning. (such as hydraulic systems for pavers)
9. When specific traffic, safety, or emergency situations arise.
10. If the ambient temperature is less than 32 degrees Fahrenheit. Limited idling to provide for the safety of vehicle occupants (e.g. to run the heater).

11. If the ambient temperature is greater than 90 degrees Fahrenheit. Limited idling to provide for the safety of vehicle occupants of off-highway equipment (e.g. to run the air conditioning) no more than 30 minutes.
12. Diesel powered vehicles may idle for up to 30 minutes to minimize restart problems.

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

OUTSOURCING OUTSIDE THE USA:

(9-21-04) (Rev. 5-16-06)

SP1 G150

All work on consultant contracts, services contracts, and construction contracts shall be performed in the United States of America. No work shall be outsourced outside of the United States of America.

Outsourcing for the purpose of this provision is defined as the practice of subcontracting labor, work, services, staffing, or personnel to entities located outside of the United States.

The North Carolina Secretary of Transportation shall approve exceptions to this provision in writing.

EROSION AND SEDIMENT CONTROL/STORMWATER CERTIFICATION:

(1-16-07) (Rev. 10-15-24)

105-16, 225-2, 16

SP1 G180

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 Contractor and subcontractor operations, insure 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.

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 Contractor'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 Contractor 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 Contractor'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 Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contractor 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.

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.

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.

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.

Measurement and Payment

All work described within this provision and the role of 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.

PROJECT SPECIAL PROVISIONS**ROADWAY****TIPPING FEES:****Description**

This item consists of the actual cost assessed to the Contractor by an approved landfill for disposal of materials generated directly from work under this contract.

Measurement and Payment

Tipping Fees + 3% will be measured and paid as the actual cost assessed to the Contractor by an approved landfill for disposal of materials generated directly from work under this contract, plus 3% to cover overhead processing. The unit price of Tipping Fees for all prospective bidders shall be pre-set by the Department at \$1.00. The Contractor shall submit a detailed receipt from the facility showing that the tipping fee payment has been made.

Payment will be made under:

Pay Item

Tipping Fees + 3%

Pay Unit

Dollar

CLEARING:**Description**

Perform clearing (grubbing excluded) within the limits established by the clearing method shown on the plans or as directed by the engineer.

Construction Method

The Contractor shall clear trees and other vegetation within the utility corridor, as shown on the plans or as delineated in the field by the Engineer.

The Engineer will designate all areas of growth or individual trees within the construction limits that shall be preserved due to their desirability for landscape or erosion control purposes; these preservation growth areas and trees will be shown on the plans or delineated within the construction limits by the Engineer. Special care should be taken to limit adverse impacts to these preservation areas as well as to environmentally sensitive areas.

Prevent limb, bark, or root injuries to trees, shrubs or other types of vegetation that are to be preserved.

Where plants are damaged by any construction operations to such an extent as to destroy their value for shade or other landscape purposes, those damage plants shall be cut and disposed of.

Limit ground disturbance to the greatest extent possible. Repair scarred areas in accordance with generally accepted horticultural practice, utilizing the appropriate erosion control measures, addressed elsewhere in this contract, to ensure slope stability and vegetative ground cover to prevent soil erosion.

Measurement and Payment

Clearing will be measured and paid for at the contract unit price per acre. The unit price bid for clearing shall include but not limited to all labor, tools, equipment, and incidentals necessary for felling, pruning, removal, and disposal of trees and vegetation.

Payment will be made under:

Pay Item

Clearing

Pay Unit

Acre

STUMP REMOVAL:**Description**

Removal and disposal of tree stumps within the project limits as directed by the Engineer.

Personnel

The Contractor shall provide personnel to conduct operations as defined below.

Construction Method

The Contractor shall remove and dispose of tree stumps as shown on the plans or as delineated in the project limits by the Engineer. The extraction of the tree stump shall include the root-ball of the tree stump. Once the tree stump and root-ball have been removed from the ground, the Contractor shall backfill the resulting depression to match the existing, adjacent grade, in accordance with generally accepted horticultural practice, utilizing the appropriate erosion control measures, addressed elsewhere in this contract, to ensure slope stability and vegetative ground cover to prevent soil erosion.

Measurement and Payment

Stump Removal will be measured and paid for at the contract unit price per each. The unit price bid for stump removal shall include but not limited to all labor, tools, equipment, and incidentals necessary for removal and disposal of the stump, root-ball and backfilling.

Payment will be made under:

Pay Item

Stump Removal

Pay Unit

Each

CONES:

(3-19-24)

1135

SP11 R35

Revise the *Standard Specifications* as follows:

Page 11-11, Article 1135-3 CONSTRUCTION METHODS, lines 19-20, delete the third sentence of the first paragraph, "Do not use cones in the upstream taper of lane or shoulder closures for multi-lane roadways."

FLAGGERS:

(12-17-24)

1150

SP11 R50

Revise Section 1150 of the *Standard Specification* as follows:

Page 11-13, Article 1150-1, DESCRIPTION, add the following after line 31:

Alternatively, at the discretion of the Contractor, the Contractor may furnish, install, place in operation, repair, maintain, relocate, and remove remotely controlled Automated Flagging Assistance Devices (AFAD) or Temporary Portable Traffic Signal units (PTS units) to assist, supplement, or replace human flaggers for one-lane, two-way traffic maintenance during construction in accordance with this provision and the *Standard Specifications*.

For the purpose of this provision, an "approach" refers to a single lane of traffic moving in one direction toward a point of control or work zone. Flaggers, AFAD and PTS units are only used to control one lane of approaching traffic in a specific direction.

Page 11-13, Article 1150-2, MATERIALS, add the following after line 34:

Provide documentation to the Engineer that the AFAD or PTS units meets or exceeds the requirements of this special provision and is on the NCDOT APL or ITS and Signals QPL.

(A) Automated Flagging Assistance Devices (AFAD)

(1) AFAD General

Cover the automated gate arm with Department approved Type VII, VIII or IX retroreflective sheeting of vertical alternating red and white stripes at 16 inch intervals measured horizontally. When the gate arm is in the down position the minimum vertical aspect of the arm and sheeting shall be 4 inches. The retroreflectorized sheeting shall be on both sides of the gate arm. With the AFAD parked or positioned 2 feet outside or in a location deemed acceptable for the lane being controlled, the gate arm shall reach at least to the center of the lane but shall not exceed the width of the lane being controlled.

Design the system to be fail-safe. Provide a conflict monitor, malfunction monitoring unit, or similar device that monitors for malfunctions and prevents the display of conflicting indications. This system shall be electronic and operated by remote control.

(2) AFAD Type I System: RED/YELLOW

Provide a Red/Yellow AFAD with at least one set of CIRCULAR RED and CIRCULAR YELLOW lenses in a vertical configuration that are 12 inches in diameter. The bottom of the housing (including brackets) shall be at least 7 feet (2.1 meters) above the pavement.

This system is required to have yellow 12 inch aluminum or polycarbonate vehicle signal heads with 10 inch tunnel visors, backplates, and Light Emitting Diode (LED) modules. Provide signal heads, backplates, and LED modules listed on the ITS and Signals QPL available on the Department's website.

Provide an automated gate arm on the AFAD that descends to a down position across the approaching lane of traffic when the steady CIRCULAR RED lens is illuminated and then ascends to an upright position when the flashing CIRCULAR YELLOW lens is illuminated. The automated gate arm is to be designed such that if a motorist pulls underneath the gate arm while lowering, no damage to the vehicle occurs.

A STOP HERE ON RED (R10-6 or R10-6a) sign shall be installed on the right-hand side of the approach at the point at which drivers are expected to stop when the steady CIRCULAR RED lens is illuminated.

To stop traffic, the AFAD shall transition from the flashing CIRCULAR YELLOW lens by initiating a minimum 5 second steadily illuminated CIRCULAR YELLOW lens followed by the CIRCULAR RED lens.

Once the CIRCULAR RED lens is displayed, the system is to have a minimum 2 second delay between the time the steady CIRCULAR RED is displayed and the time the gate arm begins to lower. The maximum delay between CIRCULAR RED and the time the gate arm lowers is 4 seconds. To permit stopped road users to proceed, the AFAD shall display the flashing CIRCULAR YELLOW lens and the gate arm shall be placed in the upright position.

Ensure the system monitors for a lack of yellow or red signal voltage, total loss of indication in any direction, presence of multiple indications on any approach and low power conditions.

Additional sets of CIRCULAR RED and CIRCULAR YELLOW lenses located over the roadway or on the left side of the approach and operated in unison with the primary set, may be used to improve visibility of the AFAD. If the set of lenses is located over any portion of the roadway that can be used by motor vehicles, the bottom of the housing (including brackets) shall be at least 15 feet (4.6 meters) above the pavement.

(3) AFAD Type II System: STOP/SLOW

Provide STOP/SLOW signs that are octagonal in shape, made of rigid material, and at least 36 inch x 36 inch in size. Letters shall be a minimum of 8 inches high. The STOP face shall have a red background with white letters and border.

The SLOW face shall be diamond shaped, orange, or yellow background with black letters and border. Cover both faces in a Department approved Type VII, VIII or IX retroreflective sheeting. The minimum mounting height for the sign faces shall be 7 feet above the pavement to the bottom of the sign.

The AFAD's STOP/SLOW signs shall be supplemented with active conspicuity devices by incorporating a stop beacon (red lens) and a warning beacon (yellow lens). The stop beacon shall be no more than 24 inches above the STOP face. Mount the warning beacon no more than 24 inches above or beside of the SLOW face. Except for the mounting locations, the

beacons shall conform to the provisions of Chapter 4L of the MUTCD and have 12 inch signal lenses.

Strobe/flashing lights are an acceptable alternative to flashing beacons. If utilized, they shall be either white or red flashing lights located within the STOP face and white or yellow flashing lights within the SLOW face and conform to the provisions of Chapter 6D of the MUTCD. If used, the lens diameter shall be a minimum of 5 inches with a minimum height of 6 inches. Equip strobes/flashing lights for both dual and quad flash patterns.

Type B warning lights shall not be used in lieu of the beacons or the strobe lights.

The faces of the AFADs STOP/SLOW sign may include louvers. If louvers are used, design the louvers such that the aspect of the sign face to approaching traffic is a full sign face at a distance of 50 feet or greater.

A WAIT ON STOP (R1-7) sign and a GO ON SLOW (R1-8) sign shall be displayed to traffic approaching the AFAD. Position signs on the same support structure as the AFAD. Both signs shall have black legends and borders on white Type III sheeting backgrounds. Each of these signs shall be rectangular in shape and be at least 24 inch x 30 inch size with letters at least 6 inches high.

Provide an automated gate arm on the AFAD that descends to a down position across the approaching lane of traffic when the STOP face is displayed and then ascends to an upright position when the SLOW face is displayed.

The automated gate arm is to be designed such that if a motorist pulls underneath the gate arm while lowering, no damage to the vehicle occurs.

A STOP HERE ON RED (R10-6 or R10-6a) sign shall be installed on the right-hand side of the approach at the point at which drivers are expected to stop when the STOP face is displayed.

When approaching motorists are to proceed, display the SLOW face and the warning beacon or strobes are to flash on the AFAD. When approaching motorists are will be stopped, display the STOP face and the stop beacon or strobes are to flash on the AFAD.

To stop traffic, the AFAD will transition from the SLOW face to the STOP face by initiating a minimum 5 second change cycle. First, the warning beacon is to be steadily illuminated for the change cycle. If strobes are used in lieu of a warning beacon, they are to be placed in the quad flash pattern. At the end of the change cycle, the STOP face is to be displayed with the stop beacon flashing and the warning beacon or strobes are to stop flashing. Once the STOP face is displayed, the system is to have a minimum 2 second delay between the time the STOP face is displayed and the time the gate arm begins to lower. The maximum delay between the time the STOP face is displayed and the time the gate arm lowers is 4 seconds.

To permit stopped road users to proceed, the gate arm shall be placed in the upright position and the AFAD shall display the SLOW face and the warning beacon or strobes are to flash in the dual flash pattern.

Do not flash the stop beacon when the SLOW face is displayed, and do not flash the warning beacon when the STOP face is displayed.

(B) Portable Traffic Signals (PTS) Units

Provide PTS units with at least one set of CIRCULAR RED, CIRCULAR YELLOW, and CIRCULAR GREEN lenses in a vertical configuration that are 12 inch diameter aluminum or polycarbonate vehicle signal heads with 10 inch tunnel visors, backplates, and Light Emitting Diode (LED) modules. All signal heads, tunnel visors, and backplates shall be yellow in color.

The bottom of the housing (including brackets) shall be at least 7 feet above the pavement for single set units. Additional signal heads on units with more than one signal head shall be capable of extending over the travel lane.

Communication Requirements

All PTS units within the signal set up systems shall maintain communication at all times by either hardwire cable or wireless radio link communication. If the hardwire cable communication is utilized the communication cable shall be deployed in a manner that will not intrude in the direct work area of the project or obstruct vehicular and pedestrian traffic. Utilize radio communication with 900MHz frequency band and frequency hopping capability. The radio link communication system shall have a minimum range of 1 mile.

Fault Mode Requirements

Revert PTS units to a flashing red mode upon system default unless otherwise specified by the Engineer. Equip the PTS units with a remote monitoring system. Where cell communication availability exists, the remote monitoring system shall adhere to the remote monitoring system section of this provision.

Remote Monitoring System

The remote monitoring system (RMS) shall be capable of reporting signal location, battery voltage / battery history and system default. Provide a password protected website viewable from any computer with internet capability for the RMS. In the event of a system default, the RMS shall provide specific information concerning the cause of the system default (i.e. red lamp on signal number 1). Equip the RMS with a mechanism capable of immediately contacting a minimum of three previously designated individuals via text messaging and/or email upon a default.

The running program operating the PTS units shall be always available and viewable through the RMS website. Maintain a history of the RMS operating system in each signal including operating hours and events and the location of the PTS units.

Trailer / Cart

The AFAD and PTS units may be mounted on either a trailer or a moveable cart system.

Finish all exterior metal surfaces with Federal orange enamel per AMS-STD-595, color chip ID# 13538 or 12473 respectively with a minimum paint thickness of 2.5 mils (64 microns).

Design and test the AFAD or PTS units trailer / cart to withstand an 80 MPH wind load while in the operational position. Provide independent certification that the assembly meets the design wind load.

Equip the AFAD or PTS units with leveling jacks capable of stabilizing the unit in a horizontal position when located on slopes 6:1 or flatter.

Equip trailers in compliance with North Carolina Law governing motor vehicles and include a 12-volt trailer lighting system complying with *Federal Motor Carrier Safety Regulations 393*, safety chains and a minimum 2 inch ball hitch.

Provide a minimum 4 inch wide strip of fluorescent conspicuity sheeting retroreflective sheeting to the frame of the trailer. Apply the sheeting to all sides of the trailer. The sheeting shall meet the ASTM requirements of Type VII, VIII or IX.

Power System

Design the systems to operate both with and without an external power source. Furnish transmitters, generators, batteries, controls and all other components necessary to operate the device.

Provide equipment that is solar powered and supplemented with a battery backup system that includes a minimum 110/120 VAC powered on-board charging system capable of powering the unit for 7 continuous days with no solar power. Each unit shall also be capable of being powered by standard 110/120 VAC power sources, if applicable.

Locate batteries and electronic controls in a locked, weather and vandal resistant housings.

Page 11-14, Article 1150-3, CONSTRUCTION METHODS, add the following after line 11:

Flaggers shall have a path to escape an errant approaching vehicle at all times, unimpeded by barrier, guardrail, guiderail, parked vehicles, construction materials, slopes steeper than 2:1, or any other obstruction at all times. If an unimpeded path cannot be maintained, the Contractor shall use AFAD or PTS units in lieu of a flagger.

Provide documentation to the Engineer prior to deploying the device that the AFAD or PTS units operator(s) are qualified flagger(s) that have been properly trained through an NCDOT approved

training agency or other NCDOT approved training provider and that the qualified flagger(s) have received manufacturer training to operate that specific device. This training shall include proper installation, remote control operation, central control systems and maintenance of the AFAD or PTS units. The training shall take place off the project site where training conditions are removed from live traffic. The documentation shall include the names of the authorized trainer, the trainees, the device on which they have been trained and the date of the training. Provide updated documentation to the Engineer prior to deploying any additional operators.

Install advance warning signs and operate AFADs in accordance with the attached detail drawings in this provision.

Install advance warning signs and operate PTS units in accordance with *NCDOT Roadway Standard Drawings* No. 1101.02, Sheet 17.

AFAD and PTS units shall only be used in situations where there is only one lane of approaching traffic in the direction to be controlled. **At no time shall an AFAD unit controlling traffic through the work area be placed in an autonomous mode and/or left unattended.**

Signal timing and operation of PTS units shall be field verified and accepted by the Engineer before use.

Use AFAD or PTS units in locations where queueing from the AFAD or PTS units will extend to within 150 feet of a signalized intersection or railroad crossing. Do not use AFAD and PTS units as a substitute for or a replacement for a continuously operating temporary traffic control signal as described in Section 6F.84 of the MUTCD.

If used at night, illuminate each AFAD or PTS units as described in Section 6D of the MUTCD.

Provide a complete AFAD or PTS units that is capable of being relocated as traffic conditions demand.

If AFADs or PTS units become inoperative, be prepared at all times to replace the unit with the same type and model of AFAD or PTS units, revert to human flagging operations or terminate all construction activities requiring the use of the AFAD or PTS units until the AFAD or PTS units become operative or qualified human flaggers are available.

When the work requiring the AFAD or PTS units is not pursued for 30 minutes or longer, power off each AFAD or PTS units. Remove the AFAD or PTS units from the travel lane and relocate to a minimum of 5 feet from the edge line. AFAD gate arms shall be in the upright position. Remove all traffic control devices from the road, place two cones by each AFAD or PTS units and all signs associated with the lane closure operation shall be removed or laid down. At the end of each workday, remove all AFADs or PTS units from the roadway and shoulder areas.

Ensure the system's wireless communication links continuously monitor and verify proper transmission and reception of data used to monitor and control each AFAD or PTS units. Ensure ambient mobile or other radio transmissions or adverse weather conditions do not affect the system.

In the event of a loss of communications, immediately display the flashing RED or STOP indication on all AFAD or PTS units.

AFAD Specific Construction Methods

The flagger/operator controlling the AFAD units shall be on the project site at all times. If multiple AFAD units are used, one AFAD unit shall be the Main AFAD unit and all other units shall be remote AFAD units. Ensure that each device meets the physical display and operational characteristics as specified in the MUTCD.

Multiple AFAD units may be controlled with **one** flagger/operator when the AFAD units meet each of the following requirements:

- (1) AFAD units are spaced no greater than the manufacturer's recommendations.
- (2) Both AFAD units can be seen at the same time from the flagger/operator's position, or the AFAD is operating on its own secure network with malfunction detection and notification to the flagger/operator.
- (3) The flagger/operator has an unobstructed view of approaching traffic in both directions from the flagger/operator position or the AFAD is operating on its own secure network, with cameras that provide the flagger/operator an unobstructed view of approaching traffic from both directions. The flagger/operator may control the AFAD units from a pilot vehicle.

If any of the above requirements are not met, flagger/operator control each AFAD unit.

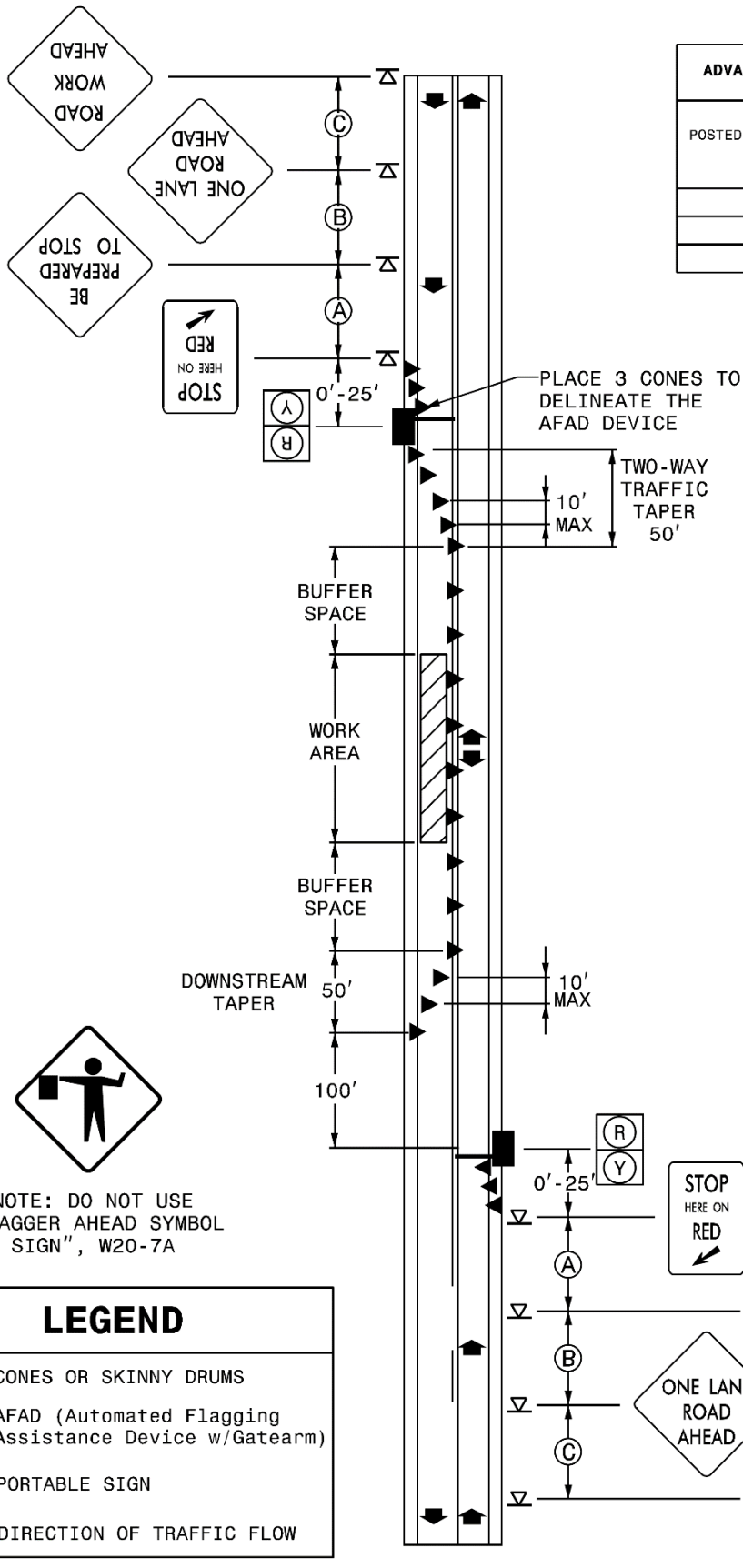
AFAD operators may either control traffic at side streets or driveways between the AFAD units or operate the pilot car while operating the AFAD system if approved by the Engineer. AFAD units must continue to be within clear sight of the operator during these work activities.

Page 11-14, Article 1150-4, MEASUREMENT AND PAYMENT, add the following after line 24:

Each AFAD or PTS unit will be measured and paid for as *Flaggers* paid by day in accordance with Article 1150-4 of the *Standard Specifications*. Where the pay item for *Flaggers* is not included in the original contract then no separate payment will be made for this item and payment will be included in the lump sum price bid for *Temporary Traffic Control* found elsewhere in this contract. Each approach controlled by AFAD or PTS units will be measured and paid as one flagger, irrespective of the number of devices used. If multiple PTS units are required to control a single approach, these units will collectively be considered as replacing one flagger.

No separate measurement or payment will be made for AFAD or PTS unit operators, as the cost of such including their training and operational costs shall be included in the unit or lump sum price for *Flaggers* or *Temporary Traffic Control*. Such price and payment also includes the relocation, maintenance, and removal during repair periods of AFAD or PTS units as well as the signal controller, communication, vehicle detection system, traffic signal software of PTS units and any other incidentals necessary to complete the work.

Red/Yellow Lens AFAD (TYPE I)



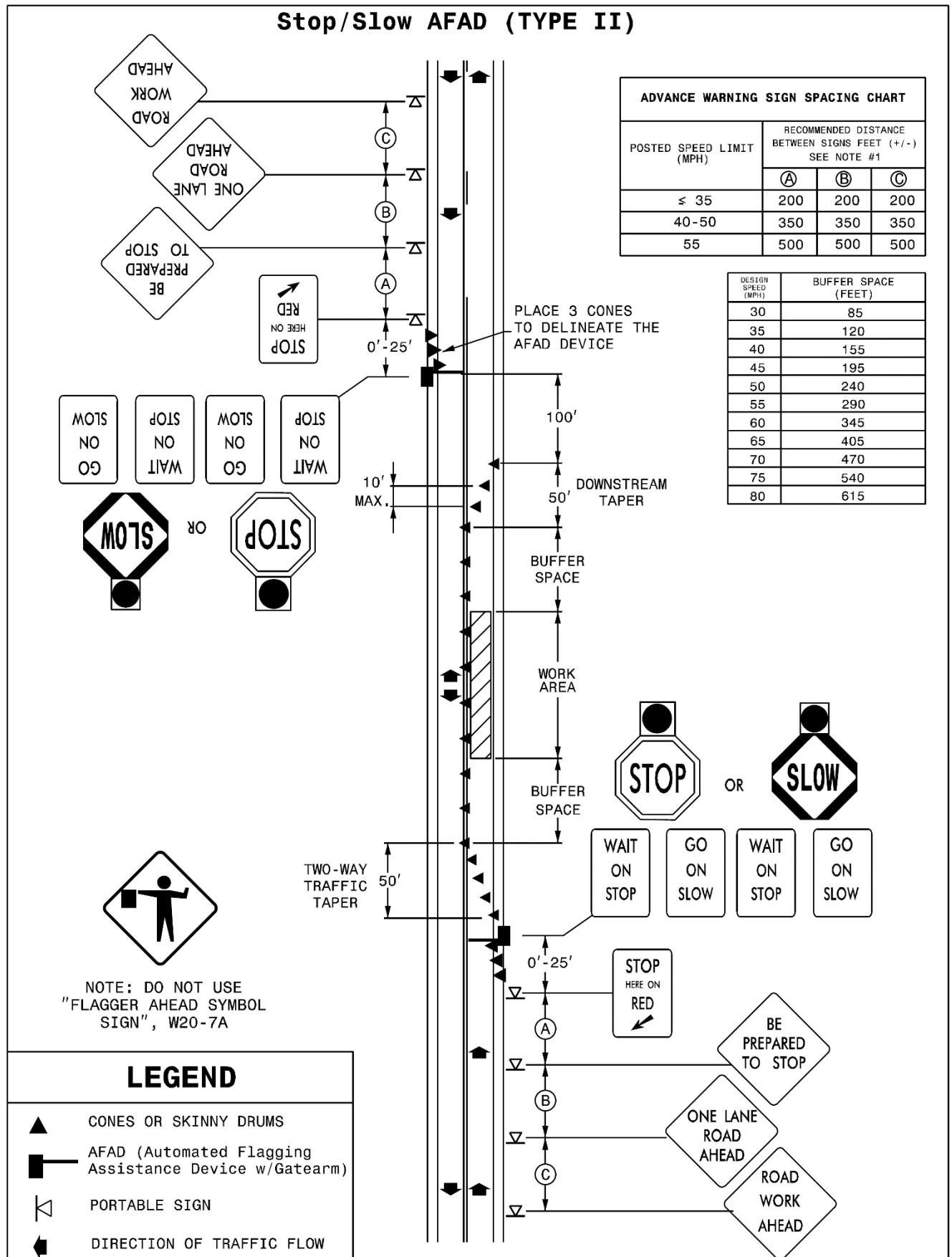
ADVANCE WARNING SIGN SPACING CHART			
POSTED SPEED LIMIT (MPH)	RECOMMENDED DISTANCE BETWEEN SIGNS FEET (+/-) SEE NOTE #1		
	(A)	(B)	(C)
≤ 35	200	200	200
40-50	350	350	350
55	500	500	500

DESIGN SPEED (MPH)	BUFFER SPACE (FEET)
30	85
35	120
40	155
45	195
50	240
55	290
60	345
65	405
70	470
75	540
80	615

NOTE: DO NOT USE
"FLAGGER AHEAD SYMBOL
SIGN", W20-7A

LEGEND

- ▲ CONES OR SKINNY DRUMS
- AFAD (Automated Flagging Assistance Device w/Gatearm)
- ◀ PORTABLE SIGN
- ➡ DIRECTION OF TRAFFIC FLOW

Stop/Slow AFAD (TYPE II)

STANDARD SPECIAL PROVISION
AVAILABILITY OF FUNDS – TERMINATION OF CONTRACTS

(5-20-08)(Rev. 1-16-24)

Z-2

General Statute 143C-6-11. (h) Highway Appropriation is hereby incorporated verbatim in this contract 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 *Standard Specifications*.

STANDARD SPECIAL PROVISION
NCDOT GENERAL SEED SPECIFICATION FOR SEED QUALITY

(5-17-11)

Z-3

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:

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

Seed of Pensacola Bahiagrass shall not contain more than 7% inert matter, Kentucky Bluegrass, Centipede and Fine or Hard Fescue shall not contain more than 5% inert matter whereas a maximum of 2% inert matter will be allowed on all other kinds of seed. In addition, all seed shall

not contain more than 2% other crop seed nor more than 1% total weed seed. The germination rate as tested by the North Carolina Department of Agriculture shall not fall below 70%, which includes both dormant and hard seed. Seed shall be labeled with not more than 7%, 5% or 2% inert matter (according to above specifications), 2% other crop seed and 1% total weed seed.

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

FURTHER SPECIFICATIONS FOR EACH SEED GROUP ARE GIVEN BELOW:

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

Sericea Lespedeza
Oats (seeds)

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

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

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

Common or Sweet Sundangrass

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

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

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

Centipedegrass	Japanese Millet
Crownvetch	Reed Canary Grass
Pensacola Bahiagrass	Zoysia
Creeping Red Fescue	

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

STANDARD SPECIAL PROVISION
ERRATA

(1-16-24)

Z-4

Revise the *2024 Standard Specifications* 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 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 16-14, 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 16-3, Article 1609-2 MATERIALS, after line 26, replace "Type 4" with "Type 4a".

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

STANDARD SPECIAL PROVISION**PLANT AND PEST QUARANTINES****(Imported Fire Ant, Gypsy Moth, Witchweed, Emerald Ash Borer, Guava Root Knot Nematode, And Other Noxious Weeds)**

(3-18-03) (Rev. 5-21-19)

Z-04a

Within Quarantined Area

This project may be within a county regulated for plant and/or pests. If the project or any part of the Contractor'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.

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.

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/plantindustry/Plant/quaran/table2.htm> 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.

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, gypsy moth, witchweed, emerald ash borer, guava root knot nematode, or other noxious weeds.

STANDARD SPECIAL PROVISION**MINIMUM WAGES**

(7-21-09)

Z-5

FEDERAL: The Fair Labor Standards Act provides that with certain exceptions every employer shall pay wages at the rate of not less than SEVEN DOLLARS AND TWENTY FIVE CENTS (\$7.25) per hour.

STATE: The North Carolina Minimum Wage Act provides that every employer shall pay to each of his employees, wages at a rate of not less than SEVEN DOLLARS AND TWENTY FIVE CENTS (\$7.25) per hour.

The minimum wage paid to all skilled labor employed on this contract shall be SEVEN DOLLARS AND TWENTY FIVE CENTS (\$7.25) per hour.

The minimum wage paid to all intermediate labor employed on this contract shall be SEVEN DOLLARS AND TWENTY FIVE CENTS (\$7.25) per hour.

The minimum wage paid to all unskilled labor on this contract shall be SEVEN DOLLARS AND TWENTY FIVE CENTS (\$7.25) per hour.

This determination of the intent of the application of this act to the contract on this project is the responsibility of the Contractor.

The Contractor shall have no claim against the Department of Transportation for any changes in the minimum wage laws, Federal or State. It is the responsibility of the Contractor to keep fully informed of all Federal and State Laws affecting his contract.

STANDARD SPECIAL PROVISION**TITLE VI AND NONDISCRIMINATION:**

(6-28-77)(Rev 1/16/2024)

Z-6

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:</i> Sex under this program does not include sexual orientation.	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. <i>Note:</i> 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, Nondiscrimination 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.)

STANDARD SPECIAL PROVISION**ON-THE-JOB TRAINING**

(10-16-07) (Rev. 4-21-15)

Z-10

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.

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.

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 1 to 15 per contractor per calendar year. The Contractor shall sign an agreement to fulfill their annual goal for the year.\

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 subcontract. 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.

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.

Trainee Interviews

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

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.

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.

Measurement and Payment

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

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Henderson County

WORK ZONE TRAFFIC CONTROL

Project Special Provisions Table of Contents

Special Provision

Temporary Traffic Control

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Digitally Signed by:

A blue ink digital signature of Jeanette L. White, written in a cursive style.

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TEMPORARY TRAFFIC CONTROL

(9/1/2021) (Rev. 10/13/2023)

General Requirements

Maintain traffic on all roads in accordance with Divisions 10, 11 and 12 of the *NCDOT Standard Specifications* and the following provisions:

Install Work Zone Advance Warning Signs when work is within 40 ft. from the edge of the travel lane in accordance with Standard Drawing No. 1101.01 of the *NCDOT Roadway Standard Drawings* prior to beginning any other work. If signs are installed more than 3 calendar days prior to the beginning of work, cover the signs until the work begins. Install each work zone advance warning sign separately and not on the same post or stand with any other sign.

When personnel and/or equipment are working within 15 ft. of an open travel lane, close the nearest open shoulder using Roadway Standard Drawing No. 1101.04 unless the work area is protected by barrier or guardrail or a lane closure is installed.

When personnel and/or equipment are working on the shoulder adjacent to an undivided facility and within 5 ft. of an open travel lane, close the nearest open travel lane using Roadway Standard Drawing No. 1101.02 of the *NCDOT Roadway Standard Drawings* unless the work area is protected by barrier or guardrail.

When personnel and/or equipment are working on the shoulder adjacent to a divided facility and within 10 ft. of an open travel lane, close the nearest open travel lane using Roadway Standard Drawing No. 1101.02 of the *NCDOT Roadway Standard Drawings*, unless the work area is protected by barrier or guardrail.

When personnel and/or equipment are working within a lane of travel of an undivided or divided facility, close the lane using Roadway Standard Drawing No. 1101.02 of the *NCDOT Roadway Standard Drawings* or as directed by the Engineer. Conduct the work so that all personnel and/or equipment remain within the closed travel lane. Perform work only when weather and visibility conditions allow safe operations as directed by the Engineer.

Do not work simultaneously within 15 ft. on both sides of an open travel way, ramp, or loop within the same location, unless protected with guardrail or barrier.

Remove lane closure devices from the lane when work is not being performed behind the lane closure or when a lane closure is no longer needed or as directed by the Engineer.

Temporary Traffic Control (TTC)

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Henderson County

Refer to Standard Drawing No. 1101.02, 1101.03, 1101.04, 1101.11, 1110.01, 1110.02, 1115.01, 1130.01, 1135.01, 1145.01, 1150.01, 1165.01, and 1180.01 of the *NCDOT Roadway Standard Drawings* when closing a lane of travel or shoulder in the work zone.

Notify the Engineer (30) calendar days prior to any traffic pattern alteration.

Ensure all necessary signing is in place prior to altering any traffic pattern.

When lane closures are not in effect, space channelizing devices in work areas no greater in feet than twice the posted speed limit (MPH), except 10 ft. on-center in radii, and 3 ft. off the edge of an open travelway. Refer to *NCDOT Standard Specifications* Sections 1130 (Drums), 1135 (Cones), and 1180 (Skinny Drums) for additional requirements.

Place additional sets of three channelizing devices (Drums, Cones, or Skinny Drums) perpendicular to the edge of travelway on 100 to 500 ft. centers, as directed by the Engineer, when unopened lanes are closed to traffic.

Place Type III Barricades with “ROAD CLOSED” sign R11-2 attached, of sufficient length to close the entire roadway.

Install black on orange “DIP” (W8-2) and/or “BUMP” (W8-1) signs in advance of the uneven area in accordance with Roadway Standard Drawing 1101.11, or as directed by the Engineer.

Temporary Traffic Control (Lump Sum) shall include but not be limited to providing Signs (portable, stationary, and/or barricade mounted), including detour signing, Barricades, Truck Mounted Attenuators (TMA), Portable Changeable Message Signs (PCMS), Flashing Arrow Boards (FAB), Pilot Vehicle, Flaggers, Cones, Skinny Drums and Drums as shown in the applicable Roadway Standard Drawings and all labor, tools, equipment and incidentals necessary to furnish, install, maintain and remove traffic control devices when no longer required.

Temporary Traffic Control (Lump Sum) does not include Portable Concrete Barrier, Waterfilled Barrier, Temporary Crash Cushions, Digital Speed Limit Signs, Sequential Flashing Lights, or Presence Lights as these devices are beyond the scope of this provision.

Payment for *Temporary Traffic Control (Lump Sum)* will be made on the following schedule:

- (A) 70% of the unit bid price upon starting the project
- (B) 20% of the unit bid price when the project is 50% complete
- (C) 10% of the unit bid price when the project is 100% complete and all traffic control devices have been removed from the project.

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Henderson County

Payment will be made under:

Pay Item

Temporary Traffic Control

Pay Unit

Lump Sum

PROJECT SPECIAL PROVISIONS

EROSION CONTROL

[SEE NEXT PAGE]

CONSTRUCTION MATERIALS MANAGEMENT

(3-19-19) (rev. 04-27-20)

Description

The requirements set forth shall be adhered to in order to meet the applicable materials handling requirements of the NCG010000 permit. Structural controls installed to manage construction materials stored or used on site shall be shown on the E&SC Plan. Requirements for handling materials on construction sites shall be as follows:

Polyacrylamides (PAMS) and Flocculants

Polyacrylamides (PAMS) and flocculants shall be stored in leak-proof containers that are kept under storm-resistant cover or surrounded by secondary containment structures designed to protect adjacent surface waters. PAMS or other flocculants used shall be selected from the NC DWR List of Approved PAMS/Flocculants. The concentration of PAMS and other flocculants used shall not exceed those specified in the NC DWR List of Approved PAMS/Flocculants and in accordance with the manufacturer's instructions. The NC DWR List of Approved PAMS/Flocculants is available at:

https://files.nc.gov/ncdeq/Water+Quality/Environmental+Sciences/ATU/PAM8_30_18.pdf

Equipment Fluids

Fuels, lubricants, coolants, and hydraulic fluids, and other petroleum products shall be handled and disposed of in a manner so as not to enter surface or ground waters and in accordance with applicable state and federal regulations. Equipment used on the site must be operated and maintained properly to prevent discharge of fluids. Equipment, vehicle, and other wash waters shall not be discharged into E&SC basins or other E&SC devices. Alternative controls should be provided such that there is no discharge of soaps, solvents, or detergents.

Waste Materials

Construction materials and land clearing waste shall be disposed of in accordance with North Carolina General Statutes, Chapter 130A, Article 9 - Solid Waste Management, and rules governing the disposal of solid waste (15A NCAC 13B). Areas dedicated for managing construction material and land clearing waste shall be at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available. Paint and other liquid construction material waste shall not be dumped into storm drains. Paint and other liquid construction waste washouts should be located at least 50 away from storm drain inlets unless there is no alternative. Other options are to install lined washouts or use portable, removable bags or bins. Hazardous or toxic waste shall be managed in accordance with the federal Resource Conservation and Recovery Act (RCRA) and NC Hazardous Waste Rules at 15A NCAC, Subchapter 13A. Litter and sanitary waste shall be managed in a manner to prevent it from entering jurisdictional waters and shall be disposed of offsite.

Herbicide, Pesticide, and Rodenticides

Herbicide, pesticide, and rodenticides shall be stored and applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act, North Carolina Pesticide Law of 1971 and labeling restrictions.

Concrete Materials

Concrete materials onsite, including excess concrete, must be controlled and managed to avoid contact with surface waters, wetlands or buffers. No concrete or cement slurry shall be discharged from the site. (Note that discharges from onsite concrete plants require coverage under a separate NPDES permit – NCG140000.) Concrete wash water shall be managed in accordance with the *Concrete Washout Structure* provision. Concrete slurry shall be managed and disposed of in accordance with *NCDOT DGS and HOS DCAR Distribution of Class A Residuals Statewide* (Permit No. WQ0035749). Any hardened concrete residue will be disposed of, or recycled on site, in accordance with state solid waste regulations.

Earthen Material Stock Piles

Earthen material stock piles shall be located at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.

Measurement and Payment

Conditions set within the *Construction Materials Management* provision are incidental to the project for which no direct compensation will be made.

ENVIRONMENTALLY SENSITIVE AREAS:**Description**

This project is located in an *Environmentally Sensitive Area*. This designation requires special procedures to be used for clearing and grubbing, temporary stream crossings, and grading operations within the Environmentally Sensitive Areas identified on the plans and as designated by the Engineer. This also requires special procedures to be used for seeding and mulching and staged seeding within the project.

The Environmentally Sensitive Area shall be defined as a 50-foot buffer zone on both sides of the stream or depression measured from top of streambank or center of depression.

Construction Methods**(A) Clearing and Grubbing**

In areas identified as Environmentally Sensitive Areas, the Contractor may perform clearing operations, but not grubbing operations until immediately prior to beginning grading operations as described in Article 200-1 of the *Standard Specifications*. Only clearing operations (not grubbing) shall be allowed in this buffer zone until immediately

prior to beginning grading operations. Erosion control devices shall be installed immediately following the clearing operation.

(B) Grading

Once grading operations begin in identified Environmentally Sensitive Areas, work shall progress in a continuous manner until complete. All construction within these areas shall progress in a continuous manner such that each phase is complete and areas are permanently stabilized prior to beginning of next phase. Failure on the part of the Contractor to complete any phase of construction in a continuous manner in Environmentally Sensitive Areas will be just cause for the Engineer to direct the suspension of work in accordance with Article 108-7 of the *Standard Specifications*.

(C) Temporary Stream Crossings

Any crossing of streams within the limits of this project shall be accomplished in accordance with the requirements of Subarticle 107-12 of the *Standard Specifications*.

(D) Seeding and Mulching

Seeding and mulching shall be performed in accordance with Section 1660 of the *Standard Specifications* and vegetative cover sufficient to restrain erosion shall be installed immediately following grade establishment.

Seeding and mulching shall be performed on the areas disturbed by construction immediately following final grade establishment. No appreciable time shall lapse into the contract time without stabilization of slopes, ditches and other areas within the Environmentally Sensitive Areas.

(E) Stage Seeding

The work covered by this section shall consist of the establishment of a vegetative cover on cut and fill slopes as grading progresses. Seeding and mulching shall be done in stages on cut and fill slopes that are greater than 20 feet in height measured along the slope, or greater than 2 acres in area. Each stage shall not exceed the limits stated above.

Additional payments will not be made for the requirements of this section, as the cost for this work shall be included in the contract unit prices for the work involved.

MINIMIZE REMOVAL OF VEGETATION:

The Contractor shall minimize removal of vegetation within project limits to the maximum extent practicable. Vegetation along stream banks and adjacent to other jurisdictional resources outside the construction limits shall only be removed upon approval of Engineer. No additional payment will be made for this minimization work.

SAFETY FENCE AND JURISDICTIONAL FLAGGING:**Description**

Safety Fence shall consist of furnishing materials, installing and maintaining polyethylene or polypropylene fence along the outside riparian buffer, wetland, or water boundary, or other boundaries located within the construction corridor to mark the areas that have been approved to infringe within the buffer, wetland, endangered vegetation, culturally sensitive areas or water. The fence shall be installed prior to any land disturbing activities.

Interior boundaries for jurisdictional areas noted above shall be delineated by stakes and highly visible flagging.

Jurisdictional boundaries at staging areas, waste sites, or borrow pits, whether considered outside or interior boundaries shall be delineated by stakes and highly visible flagging.

Materials**(A) Safety Fencing**

Polyethylene or polypropylene fence shall be a highly visible preconstructed safety fence approved by the Engineer. The fence material shall have an ultraviolet coating.

Either wood posts or steel posts may be used. Wood posts shall be hardwood with a wedge or pencil tip at one end, and shall be at least 5 ft. in length with a minimum nominal 2" x 2" cross section. Steel posts shall be at least 5 ft. in length, and have a minimum weight of 0.85 lb/ft of length.

(B) Boundary Flagging

Wooden stakes shall be 4 feet in length with a minimum nominal 3/4" x 1-3/4" cross section. The flagging shall be at least 1" in width. The flagging material shall be vinyl and shall be orange in color and highly visible.

Construction Methods

No additional clearing and grubbing is anticipated for the installation of this fence. The fence shall be erected to conform to the general contour of the ground.

(A) Safety Fencing

Posts shall be set at a maximum spacing of 10 ft., maintained in a vertical position and hand set or set with a post driver. Posts shall be installed a minimum of 2 ft. into the ground. If hand set, all backfill material shall be thoroughly tamped. Wood posts may be sharpened to a dull point if power driven. Posts damaged by power driving shall be removed and replaced prior to final acceptance. The tops of all wood posts shall be cut at a 30-degree angle. The wood posts may, at the option of the Contractor, be cut at this angle either before or after the posts are erected.

The fence geotextile shall be attached to the wood posts with one 2" galvanized wire staple across each cable or to the steel posts with wire or other acceptable means.

Place construction stakes to establish the location of the safety fence in accordance with Article 105-9 or Article 801-1 of the *Standard Specifications*. No direct pay will be made for the staking of the safety fence. All stakeouts for safety fence shall be considered incidental to the work being paid for as "Construction Surveying", except that where there is no pay item for construction surveying, all safety fence stakeout will be performed by state forces.

The Contractor shall be required to maintain the safety fence in a satisfactory condition for the duration of the project as determined by the Engineer.

(B) Boundary Flagging

Boundary flagging delineation of interior boundaries shall consist of wooden stakes on 25 feet maximum intervals with highly visible orange flagging attached. Stakes shall be installed a minimum of 6" into the ground. Interior boundaries may be staked on a tangent that runs parallel to buffer but must not encroach on the buffer at any location. Interior boundaries of hand clearing shall be identified with a different colored flagging to distinguish it from mechanized clearing.

Boundary flagging delineation of interior boundaries will be placed in accordance with Article 105-9 or Article 801-1 of the *Standard Specifications*. No direct pay will be made for delineation of the interior boundaries. This delineation will be considered incidental to the work being paid for as *Construction Surveying*, except that where there is no pay item or construction surveying the cost of boundary flagging delineation shall be included in the unit prices bid for the various items in the contract. Installation for delineation of all jurisdictional boundaries at staging areas, waste sites, or borrow pits shall consist of wooden stakes on 25 feet maximum intervals with highly visible orange flagging attached. Stakes shall be installed a minimum of 6" into the ground. Additional flagging may be placed on overhanging vegetation to enhance visibility but does not substitute for installation of stakes.

Installation of boundary flagging for delineation of all jurisdictional boundaries at staging areas, waste sites, or borrow pits shall be performed in accordance with Subarticle 230-4(B)(5) or Subarticle 802-2(F) of the *Standard Specifications*. No direct pay will be made for this delineation, as the cost of same shall be included in the unit prices bid for the various items in the contract.

The Contractor shall be required to maintain alternative stakes and highly visible flagging in a satisfactory condition for the duration of the project as determined by the Engineer.

Measurement and Payment

Safety Fence will be measured and paid as the actual number of linear feet of polyethylene or polypropylene fence installed in place and accepted. Such payment will be full compensation including but not limited to furnishing and installing fence geotextile with necessary posts and post bracing, staples, tie wires, tools, equipment and incidentals necessary to complete this work.

Payment will be made under:

Pay Item

Safety Fence

Pay Unit

Linear Foot

STABILIZATION REQUIREMENTS:

(4-30-2019)(Rev. 1-21-2025)

Stabilization for this project shall comply with the time frame guidelines as specified by the NCG-010000 general construction permit issued by the North Carolina Department of Environmental Quality Division of Energy, Mineral and Land Resources. Temporary or permanent ground cover stabilization shall occur within the following time frames from the last land-disturbing activity:

- Stabilize perimeter dikes, swales, ditches, and perimeter slopes within 7 calendar days.
- Stabilize high quality water (HQW) zones within 7 calendar days.
- Stabilize slopes steeper than 3:1 within 7 calendar days.
 - If slopes are 10 feet or less in length and are not steeper than 2:1, 14 calendar days are allowed.
- Stabilize slopes 3:1 to 4:1 within 14 calendar days.
 - 7 calendar days for slopes greater than 50 feet in length and with slopes steeper than 4:1.
 - 7 calendar days for perimeter dikes, swales, ditches, perimeter slopes, and HQW Zones.
- Stabilize areas with slopes flatter than 4:1 within 14 calendar days.
 - 7 calendar days for perimeter dikes, swales, ditches, perimeter slopes, and HQW Zones.

The stabilization timeframe for High Quality Water (HQW) Zones shall be 7 calendar days with no exceptions for slope grades or lengths. High Quality Water Zones (HQW) Zones are defined by North Carolina Administrative Code 15A NCAC 04A.0105 (25). Temporary and permanent ground cover stabilization shall be achieved in accordance with the provisions in this contract and as directed.

NATIVE GRASS SEEDING AND MULCHING:

(West)

Native Grass Seeding and Mulching shall be performed on the disturbed areas of wetlands and riparian areas, and adjacent to Stream Relocation and/or trout stream construction within a 50 foot zone on both sides of the stream or depression, measured from top of stream bank or center of depression. The stream bank of the stream relocation shall be seeded by a method that does not alter the typical cross section of the stream bank. Native Grass Seeding and Mulching shall also be performed in the permanent soil reinforcement mat section of preformed scour holes, and in other areas as directed.

The kinds of seed and fertilizer, and the rates of application of seed, fertilizer, and limestone, shall be as stated below. During periods of overlapping dates, the kind of seed to be used shall be determined. All rates are in pounds per acre.

August 1 - June 1

May 1 – September 1

18#	Creeping Red Fescue	18#	Creeping Red Fescue
8#	Big Bluestem	8#	Big Bluestem
6#	Indiangrass	6#	Indiangrass
4#	Switchgrass	4#	Switchgrass
35#	Rye Grain	25#	German or Browntop Millet
500#	Fertilizer	500#	Fertilizer
4000#	Limestone	4000	Limestone

Approved Creeping Red Fescue Cultivars:

Aberdeen Boreal Epic Cindy Lou

Fertilizer shall be 10-20-20 analysis. A different analysis of fertilizer may be used provided the 1-2-2 ratio is maintained and the rate of application adjusted to provide the same amount of plant food as a 10-20-20 analysis and as directed.

Temporary Seeding

Fertilizer shall be the same analysis as specified for *Seeding and Mulching* and applied at the rate of 400 pounds and seeded at the rate of 50 pounds per acre. German Millet or Browntop Millet shall be used in summer months and rye grain during the remainder of the year. The Engineer will determine the exact dates for using each kind of seed.

Fertilizer Topdressing

Fertilizer used for topdressing shall be 16-8-8 grade and shall be applied at the rate of 500 pounds per acre. A different analysis of fertilizer may be used provided the 2-1-1 ratio is maintained and the rate of application adjusted to provide the same amount of plant food as 16-8-8 analysis and as directed.

Supplemental Seeding

The kinds of seed and proportions shall be the same as specified for *Seeding and Mulching*, and the rate of application may vary from 25# to 75# per acre. The actual rate per acre will be determined prior to the time of topdressing and the Contractor will be notified in writing of the rate per acre, total quantity needed, and areas on which to apply the supplemental seed. Minimum tillage equipment, consisting of a sod seeder shall be used for incorporating seed into the soil as to prevent disturbance of existing vegetation. A clodbuster (ball and chain) may be used where degree of slope prevents the use of a sod seeder.

Mowing

The minimum mowing height shall be 6 inches.

Measurement and Payment

Native Grass *Seeding and Mulching* will be measured and paid for in accordance with Article 1660-8 of the *Standard Specifications*.

WASTE AND BORROW SOURCES:

(2-16-11) (Rev. 3-17-22)

Payment for temporary erosion control measures, except those made necessary by the Contractor's own negligence or for his own convenience, will be paid for at the appropriate contract unit price for the devices or measures utilized in borrow sources and waste areas.

No additional payment will be made for erosion control devices or permanent seeding and mulching in any commercial borrow or waste pit. All erosion and sediment control practices that may be required on a commercial borrow or waste site will be done at the Contractor's expense.

All offsite Staging Areas, Borrow and Waste sites shall be in accordance with "Borrow and Waste Site Reclamation Procedures for Contracted Projects" located at:

<https://connect.ncdot.gov/resources/roadside/FieldOperationsDocuments/Contract%20Reclamation%20Procedures.pdf>

All forms and documents referenced in the "Borrow and Waste Site Reclamation Procedures for Contracted Projects" shall be included with the reclamation plans for offsite staging areas, and borrow and waste sites.

North Carolina Department of Transportation

Letting ID: L250128N
01/28/2025 02:00:00 PM

Contract ID: DN01074
Call: 005

Line Number	Item Number	Quantity	Unit	Unit Price	Extension Price
Section 0001					
ROADWAY ITEMS					
0001	0000100000-N	1.000	LS	\$10,000.0000	\$10,000.00
	MOBILIZATION				
0002	0000970000-E	7.000	ACR	\$15,000.0000	\$105,000.00
	GENERIC MISCELLANEOUS ITEM CLEARING				
0003	4457000000-N	1.000	LS	\$10,000.0000	\$10,000.00
	TEMPORARY TRAFFIC CONTROL				
0004	6000000000-E	1000.000	LF	\$5.0000	\$5,000.00
	TEMPORARY SILT FENCE				
0005	6015000000-E	1.000	ACR	\$0.0100	\$0.01
	TEMPORARY MULCHING				
0006	6018000000-E	100.000	LB	\$0.0100	\$1.00
	SEED FOR TEMPORARY SEEDING				
0007	6021000000-E	1.000	TON	\$0.0100	\$0.01
	FERTILIZER FOR TEMPORARY SEEDING				
0008	6029000000-E	2600.000	LF	\$0.0100	\$26.00
	SAFETY FENCE				
0009	6036000000-E	1080.000	SY	\$0.0100	\$10.80
	MATTING FOR EROSION CONTROL				
0010	6042000000-E	35.000	LF	\$0.0100	\$0.35
	1/4" HARDWARE CLOTH				
0011	6132000000-N	5.000	EA	\$500.0000	\$2,500.00
	GENERIC EROSION CONTROL ITEM STUMP REMOVAL				
Section 0001 Total					\$132,538.17
Item Total					\$132,538.17

ELECTRONIC BID SUBMISSION

By submitting this bid electronically, I hereby acknowledge that all requirements included in the hard copy proposal, addendum, amendments, plans, standard specifications, supplemental specifications and special provisions are part of the bid and contract. Further, I acknowledge that I have read, understand, accept, acknowledge and agree to comply with all statements in this electronic bid.

=====

NON-COLLUSION, DEBARMENT AND GIFT BAN CERTIFICATION

The prequalified bidder 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 any bid or contract, that the prequalified bidder has not been convicted of violating N.C.G.S. §133-24 within the last three years, and that the prequalified bidder intends to do the work with his own bonafide employees or subcontractors and will not bid for the benefit of another contractor.

By submitting this non-collusion, debarment and gift ban certification, the Contractor is attesting 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.

DEBARMENT CERTIFICATION OF PREQUALIFIED BIDDER

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 and debarment certification will result in the prequalified bidder's bid being considered non-responsive.

EXPLANATION:

=====

Award Limits on Multiple Projects

By answering YES to this statement, the bidder acknowledges that they are using the award limits on multiple projects? **Yes** ☐ **No** ☒

A bidder who desires to bid on more than one project on which bids are to be opened on the same date, and who also desires to avoid receiving an award of more projects than he is equipped to handle, may bid on any number of projects but may limit the total amount of work awarded to him on selected projects by completing the AWARD LIMITS ON MULTIPLE PROJECTS.

The Award Limits on Multiple Projects must be filled in on each project bid for which the Bidder desires protection.

It is the desire of the Bidder to be awarded contracts, the value of which will not exceed a total of for those

projects indicated herein, for which bids will be opened on (MM/DD/YY)

The Award Limits shall apply to the following projects:

Contract Number
County

Contract Number
County

Contract Number
County

Contract Number
County

Contract Number
County

Contract Number
County

It is agreed that if I am (we are) the low Bidder(s) on indicated projects, the total value of which is more than the above stipulated award limits, the Board of Transportation will award me (us) projects from among those indicated

that have a total value not to exceed the award limit and will result in the lowest total bids to the Department of Transportation.

THIS PROPOSAL CONTAINS THE FOLLOWING ERRORS/WARNINGS (IF ANY)

This Bid contains 0 amendment files

Electronic Bid Submission

By submitting this bid electronically, I hereby acknowledge that all requirements included in the hard copy proposal, addendum, amendments, plans, standard specifications, supplemental specifications and special provisions are part of the bid and contract. Further, I acknowledge that I have read, understand, accept, acknowledge and agree to comply with all statements in this electronic bid.

I hereby certify that I have the authority to submit this bid.

Signature _____

Agency _____

Date _____

Signature _____

Agency _____

Date _____

Signature _____

Agency _____

Date _____

Attachments

Failure to complete and attach the Fuel Usage Factor Adjustment Form will result in using 2.90 gallons per ton as the Fuel Usage Factor for Diesel for the asphalt items included on the form. The contractor will not be permitted to change the option after the bids are submitted.

NOTE: The maximum upload limit is 5 MB.

☐ Verify

Contract No. DN01674
County Henderson

Rev. 10-31-24

**EXECUTION OF CONTRACT
NON-COLLUSION, DEBARMENT AND GIFT BAN CERTIFICATION**

LIMITED LIABILITY COMPANY

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 Contract, 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.

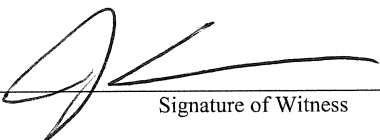
By submitting this Execution of Contract, non-collusion, debarment and gift ban certification, the Contractor is certifying his status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes 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

South Mountain Land Works, LLC
Full Name of Firm

7398 Corn Hill Road Connelly Springs, NC 28612
Address as prequalified


Signature of Witness

Jonathan C. Case
Print or type Signer's name


Signature of ~~Member~~ **Manager, Authorized Agent**
Select appropriate title

Kayla R. Case
Print or type Signer's Name

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 filed 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.

Contract No. DN01074
County Henderson

Rev. 10-31-24

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 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.

T-1

Feb 18, 2025 1:44 PM

North Carolina Department of Transportation

Page : 1 of 1

Contract Item Sheets For DN01074

Line #	ItemNumber	Sec #	Description	Quantity Unit	Unit Bid Price	Amount Bid
ROADWAY ITEMS						
0001	0000100000-N	800	MOBILIZATION	LUMP SUM	10,000.00	10,000.00
0002	0000970000-E	SP	GENERIC MISCELLANEOUS ITEM CLEARING	7 ACR	15,000.00	105,000.00
0003	4457000000-N	SP	TEMPORARY TRAFFIC CONTROL	LUMP SUM	10,000.00	10,000.00
0004	6000000000-E	1605	TEMPORARY SILT FENCE	1,000 LF	5.00	5,000.00
0005	6015000000-E	1615	TEMPORARY MULCHING	1 ACR	0.01	0.01
0006	6018000000-E	1620	SEED FOR TEMPORARY SEEDING	100 LB	0.01	1.00
0007	6021000000-E	1620	FERTILIZER FOR TEMPORARY SEEDING	1 TON	0.01	0.01
0008	6029000000-E	SP	SAFETY FENCE	2,600 LF	0.01	26.00
0009	6036000000-E	1631	MATting FOR EROSION CONTROL	1,080 SY	0.01	10.80
0010	6042000000-E	1632	1/4" HARDWARE CLOTH	35 LF	0.01	0.35
0011	6132000000-N	SP	GENERIC EROSION CONTROL ITEM STUMP REMOVAL	5 EA	500.00	2,500.00
TOTAL AMOUNT OF BID FOR ENTIRE PROJECT						\$132,538.17

1344/Feb18/Q4831/D52751070000/E11

Execution of Contract

Contract No: DN01074

County: Henderson

ACCEPTED BY THE DEPARTMENT

DocuSigned by:

Jeffrey E. Alsbaugh

160F4BFF87884E1

Proposals Engineer

02/24/2025

Date

EXECUTION OF CONTRACT AND BONDS
APPROVED AS TO FORM:

DocuSigned by:

Wanda H. Payne

160F4BFF87884E1

Division Engineer

02/25/2025

Date

Signature Sheet (Bid) - ACCEPTANCE SHEET



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/13/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Farm Bureau 711 Malcolm Blvd Connelly Springs	CONTACT NAME: Brian Stamey PHONE (A/C, No, Ext): 828-397-7456 FAX (A/C, No): 828-397-6344 E-MAIL ADDRESS: brian.stamey@ncfbins.com																					
INSURED South Mountain Landworks 7396 Corn Hill Rd Connelly Springs, NC 28612	<table border="1"><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Farm Bureau Ins. of NC Inc.</td><td>10034</td></tr><tr><td>INSURER B:</td><td></td><td></td></tr><tr><td>INSURER C:</td><td></td><td></td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Farm Bureau Ins. of NC Inc.	10034	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																				
INSURER A:	Farm Bureau Ins. of NC Inc.	10034																				
INSURER B:																						
INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR	A		GL 0556249	03/13/2024 03/13/2025	03/13/2025 03/13/2026	EACH OCCURRENCE \$ 2,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 2,000,000						
	GENERAL AGGREGATE \$ 2,000,000						
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS			BAP 2205273	09/10/2024 03/20/2025	03/10/2025 09/10/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB EXCESS LIAB	A		UP 7701946	05/05/2024 05/05/2025	05/05/2025	EACH OCCURRENCE \$ 3,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 3,000,000
	DED <input type="checkbox"/> RETENTION \$						
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC 0265796	05/02/2024 05/02/2025	05/02/2025	WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
							E.L. EACH ACCIDENT \$ 100,000
							E.L. DISEASE - EA EMPLOYEE \$ 100,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Contract ID# DN01074 TIP No.: R-2588BA Tree Clearing Operations Along NC-191 (Haywood Rd) From SR 1381 (Mountain Rd) To NC-280 in Henderson County

Additional Insured: NC DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION 14
253 WEBSTER ROAD
SYLVA, NC 28779

CERTIFICATE HOLDER

CANCELLATION

NC DEPARTMENT OF TRANSPORTATION HIGHWAY DIVISION 14 253 WEBSTER ROAD SYLVA, NC 28779	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



COMMERCIAL LINES POLICY
NORTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY, INC.
P.O. Box 27427 / Raleigh, North Carolina 27611-7427

Mutual Company

COMMON POLICY DECLARATIONS

Non Assessable Policy

Policy Number: GL 0556249

Member ID Number: 2420135

Named Insured and Mailing Address:

SOUTH MOUNTAIN LANDWORKS LLC
C/O KAYLA CASE
7398 CORN HILL RD
CONNELLY SPRINGS, NC 28612-8272

Named Insured and Insurable
Interest Schedule: Refer to
Schedule - CNIS

Policy Period: From: 03/13/2025 To: 03/13/2026 At 12:01 AM Standard Time at your mailing address shown above.

Business Description: LAND EXCAVATING

POLICY RENEWAL DECLARATION

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIUM
Commercial Property Coverage Part	\$ 0.00
Commercial General Liability Coverage Part	\$ 1,729.00
Commercial Crime Coverage Part	\$ 0.00
Terrorism Risk Insurance Act	\$ 0.00
Total Annual Premium	\$ 1,729.00
FORM(S) AND ENDORSEMENT(S) MADE PART OF THIS POLICY AT TIME OF ISSUE*: <u>Refer to Forms Schedule - CLFS</u>	

*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

BRIAN STAMEY
TELE: (828) 397-7456
PO BOX 450
RUTHERFORD COLLEGE, NC
28671-0450

012 4325

01/21/2025

P.S. Reilly

Agent

Agency No.

Countersignature Date

Authorized Representative

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

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CLCD 0410



NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, INC.
COMMERCIAL GENERAL LIABILITY COVERAGE PART
SUPPLEMENTAL DECLARATIONS

Policy Number: GL 0556249

Policy Period: From: 03/13/2025 To: 03/13/2026

Effective Date of Change: 03/13/2025

Named Insured: SOUTH MOUNTAIN LANDWORKS LLC

LIMITS OF INSURANCE

\$ 2,000,000 General Aggregate Limit (Other Than Products - Completed Operations)
\$ 2,000,000 Products/Completed Operations Aggregate Limit
\$ 2,000,000 Personal Advertising Injury Limit
\$ 2,000,000 Each Occurrence Limit
\$ 100,000 Damage to Premises Rented To You Limit
\$ 5,000 Medical Expense Limit (Any One Person)

FORM OF BUSINESS: LIMITED LIABILITY COMPANY

Business Description: LAND EXCAVATING

Location of All Premises You Own, Rent or Occupy: Refer to Location Schedule - CLOS, if applicable

AUDIT PERIOD, ANNUAL, UNLESS OTHERWISE STATED.

Classifications	Codes	Estimated Premium Bases	Rates		Advance Premiums	
			Premises/ Operations	Products/ Completed Operations	Premises/ Operations	Products/ Completed Operations
ADDITIONAL INSURED	49950	1	85.338		85	
EXCAVATION (NOC)	94007	45,000 PAYROLL	25.362	11.182	1,141	503

TOTAL PREMIUM FOR THIS COVERAGE PART:

\$ 1,729.00

FORM(S) AND ENDORSEMENT(S) APPLICABLE TO THIS COVERAGE PART: Refer to Forms Schedule - CLFS

NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, INC.

NAMED INSURED AND INSURABLE INTEREST SCHEDULE

Policy Number: GL 0556249

Effective Date: 03/13/2025

Expiration Date: 03/13/2026

NAMED INSURED SCHEDULE

SOUTH MOUNTAIN LANDWORKS LLC

INSURABLE INTEREST SCHEDULE

ADDITIONAL INSURED
NC DEPARTMENT OF TRANSPORTATION
1584 YANCEYVILLE ST
GREENSBORO, NC 27405-6932
CG2026

**NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, INC.
FORMS SCHEDULE**

Policy Number: GL 0556249

Effective Date: 03/13/2025

Expiration Date: 03/13/2026

Named Insured: SOUTH MOUNTAIN LANDWORKS LLC

Effective Date of Change: 03/13/2025

POLICY FORMS

Forms and Endorsements Applying to all Coverage Parts and made part of the policy at time of issue:

CLPNCJ	01 20	COMMERCIAL LINES POLICY JACKET
IL0003	09 08	CALCULATION OF PREMIUM
IL0017	11 98	COMMON POLICY CONDITIONS
IL0269	09 08	NORTH CAROLINA CHANGES - CANCELLATION AND NONRENEWAL

GENERAL LIABILITY FORMS

Forms and Endorsements Applying to this Coverage Part and made part of the policy at time of issue:

CG0001	12 07	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0068	05 09	RECORDING & DISTRIB OF MATERIAL OR INFO IN VIOLATION OF LAW EXCL
CG2026	07 04	ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION
CG2107	05 14	EXCL-DISCL-PERS/CONF DATA RELATED LIAB
CG2132	05 09	COMMUNICABLE DISEASE EXCLUSION
CG2142	12 04	EXCL - EXPLOSION, COLLAPSE AND UNDERGROUND PROPERTY DAMAGE HAZARD
CG2144	07 98	LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT
CG2146	07 98	ABUSE OR MOLESTATION EXCLUSION
CG2147	12 07	EMPLOYMENT - RELATED PRACTICES EXCLUSION
CG2150	09 89	AMENDMENT OF LIQUOR LIABILITY EXCLUSION
CG2155	09 99	TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPTION
CG2160	09 98	EXCLUSION -YEAR 2000 COMPUTER-RELATED & OTHER ELECTRONIC PROBLEMS
CG2167	12 04	FUNGI OR BACTERIA EXCLUSION
CG2170	01 15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
CG2176	01 15	EXCL OF PUNITIVE DAMAGES RELATED TO A CERTIFIED ACT OF TERRORISM
CG2186	12 04	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS
CG2196	03 05	SILICA OR SILICA-RELATED DUST EXCLUSION
CG2294	10 01	EXCL - DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF
CG2426	07 04	AMENDMENT OF INSURED CONTRACT DEFINITION
FBGL03	06 04	EXCLUSION - LEAD
FBGL04	06 12	EARTH MOVEMENT AND SUBSIDENCE EXCLUSION
FBGL07	02 06	DESCRIPTION OF TERMS USED AS PREMIUM BASES
FBGL08	11 08	QUICK REFERENCE COMMERCIAL GENERAL LIABILITY COVERAGE PART
FBIL01	01 15	CERTIFIED TERROR LOSS DISCLOSURE OF PREM/FED SHARE OF INS LOSSES
IL0021	09 08	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
NC DEPARTMENT OF TRANSPORTATION
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. In the performance of your ongoing operations; or

B. In connection with your premises owned by or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EXPLOSION, COLLAPSE AND UNDERGROUND PROPERTY DAMAGE HAZARD (SPECIFIED OPERATIONS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Location And Description Of Operations	Excluded Hazard(s)
EXCAVATION (NOC)	EXPLOSION
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. The following exclusion is added to Paragraph 2. Exclusions in Section I – Coverages:

This insurance does not apply to "property damage" included within the "explosion hazard", the "collapse hazard" or the "underground property damage hazard" if any of these hazards is entered as an excluded hazard on the Schedule.

This exclusion does not apply to:

- a. Operations performed for you by others; or
- b. "Property damage" included within the "products completed operations hazard":

B. The following definitions are added to the Definitions Section:

1. "Collapse hazard" includes "structural property damage" and any resulting "property damage" to any other property at any time.
2. "Explosion hazard" includes "property damage" arising out of blasting or explosion. The "explosion hazard" does not include "property damage" arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.

3. "Structural property damage" means the collapse of or structural injury to any building or structure due to:

- a. Grading of land, excavating, borrowing, filling, back-filling, tunneling, pile driving, cofferdam work or caisson work; or
- b. Moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support of that building or structure.

4. "Underground property damage hazard" includes "underground property damage" and any resulting "property damage" to any other property at any time.

5. "Underground property damage" means "property damage" to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus used with them beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises:
Project: EXCAVATION (NOC)

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph **9.** of the **Definitions** Section is replaced by the following:

9. "Insured contract" means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b.** A sidetrack agreement;
- c.** Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e.** An elevator maintenance agreement;
- f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1)** That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3)** Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.



OCCURRENCE EXCESS POLICY
**NORTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY, INC.**



MUTUAL COMPANY

P.O. Box 27427 / Raleigh, North Carolina 27611-7427
DECLARATIONS PAGE

NON ASSESSABLE POLICY

Policy No. UP 7701946
UP 7701946
Renewal of Number

Membership No.: 2420135

1. & 2. Named Insured and Mailing Address:
South Mountain Landworks LLC
C/O Kayla Case
7398 Corn Hill Rd
Connelly Springs NC 28612-8272

3. Policy Period: From: 05/05/2024 To: 05/05/2025 at 12:01 A.M., Standard Time at 'your' mailing address above.
IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY,
"WE" AGREE WITH "YOU" TO PROVIDE THE INSURANCE COVERAGE STATED IN THIS POLICY.

4. LIMIT OF INSURANCE:

Policy Aggregate Limit \$ 3,000,000
Self-Insured Retention \$ 10,000 (Each "Occurrence" or "Offense" not Covered by "Underlying Insurance")

5. SCHEDULE OF PRIMARY "UNDERLYING INSURANCE"

Type of Insurance:	Auto Liability	General Liability	Employers Liability
Company: Policy No.: Policy Period: Limits of Liability:	NCFB BAP 2205273 <u>03/10/2024 to 09/10/2025</u> Each Accident \$ <u>1,000,000</u>	NCFB GL 0556249 <u>03/13/2024 to 03/13/2025</u> General Aggregate \$ <u>2,000,000</u> Products/Completed Operations Aggregate \$ <u>2,000,000</u> Personal and Advertising Injury \$ <u>1,000,000</u> Each Occurrence \$ <u>1,000,000</u>	NCFB WC 0265796 <u>05/02/2023 to 05/02/2024</u> Bodily Injury Each Accident \$ <u>100,000</u> Bodily Injury By Disease Policy Limit \$ <u>500,000</u> Bodily Injury By Disease Each Employee \$ <u>100,000</u>

6. Form of Business: ☐ Individual ☐ Partnership ☐ Corporation ☒ Limited Liability Co. ☐ Other

Business Description: Landscaping and Grading

7. Form(s) and Endorsement(s) made a part of this policy at time of issue: UMBCNCJ (0121), QRUMBC (0116), UMB-3000 (0116), UMB-122 (0598), UMB-134 (1003), UMB-141 (0206), UMB-142 (0206), UMB-143 (0206), UMB-144 (0121), UMB-145 (0906), UMB-146 (0610), UMB-057 (0691), UMB-148 (0314), UMB-130 (0115), UMB-132 (0115), UMB-133 (0115), UMB-149 (1116), UMB-125 (1102), UMB-039 (0691), UMB-147 (0313), UMB-020 (0691)

8. Terrorism Risk Insurance Act \$0.00

9. Annual Premium: \$ 1,300.00

012 4325	Brian Stamey 828-397-7456	03/01/2024 jtb	P.S. REILLEY
Agency No.	Agent Name	Countersignature Date	Authorized Representative

UMBC-D 0416



OCCURRENCE EXCESS POLICY
**NORTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY, INC.**



MUTUAL COMPANY

P.O. Box 27427 / Raleigh, North Carolina 27611-7427
DECLARATIONS PAGE

NON ASSESSABLE POLICY

Policy No. UP 7701946
UP 7701946
Renewal of Number

Membership No.: 2420135

1. & 2. Named Insured and Mailing Address:
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C/O Kayla Case
7398 Corn Hill Rd
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3. Policy Period: From: 05/05/2024 To: 05/05/2025 at 12:01 A.M., Standard Time at 'your' mailing address above.
IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY,
"WE" AGREE WITH "YOU" TO PROVIDE THE INSURANCE COVERAGE STATED IN THIS POLICY.

4. LIMIT OF INSURANCE:

Policy Aggregate Limit \$ 3,000,000
Self-Insured Retention \$ 10,000 (Each "Occurrence" or "Offense" not Covered by "Underlying Insurance")

5. SCHEDULE OF PRIMARY "UNDERLYING INSURANCE"

Type of Insurance:	Auto Liability	General Liability	Employers Liability
Company: Policy No.: Policy Period: Limits of Liability:	NCFB BAP 2205273 <u>03/10/2024 to 09/10/2025</u> Each Accident \$ <u>1,000,000</u>	NCFB GL 0556249 <u>03/13/2024 to 03/13/2025</u> General Aggregate \$ <u>2,000,000</u> Products/Completed Operations Aggregate \$ <u>2,000,000</u> Personal and Advertising Injury \$ <u>1,000,000</u> Each Occurrence \$ <u>1,000,000</u>	NCFB WC 0265796 <u>05/02/2023 to 05/02/2024</u> Bodily Injury Each Accident \$ <u>100,000</u> Bodily Injury By Disease Policy Limit \$ <u>500,000</u> Bodily Injury By Disease Each Employee \$ <u>100,000</u>

6. Form of Business: ☐ Individual ☐ Partnership ☐ Corporation ☒ Limited Liability Co. ☐ Other

Business Description: Landscaping and Grading

7. Form(s) and Endorsement(s) made a part of this policy at time of issue: UMBCNCJ (0121), QRUMBC (0116), UMB-3000 (0116), UMB-122 (0598), UMB-134 (1003), UMB-141 (0206), UMB-142 (0206), UMB-143 (0206), UMB-144 (0121), UMB-145 (0906), UMB-146 (0610), UMB-057 (0691), UMB-148 (0314), UMB-130 (0115), UMB-132 (0115), UMB-133 (0115), UMB-149 (1116), UMB-125 (1102), UMB-039 (0691), UMB-147 (0313), UMB-020 (0691)

8. Terrorism Risk Insurance Act \$0.00

9. Annual Premium: \$ 1,300.00

012 4325	Brian Stamey 828-397-7456	03/01/2024 jtb	P.S. REILLEY
Agency No.	Agent Name	Countersignature Date	Authorized Representative

UMBC-D 0416

OCCURRENCE EXCESS POLICY

THIS POLICY IS NOT DESIGNED FOR USE WITH CLAIMS-MADE UNDERLYING POLICIES. PLEASE READ THIS POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES, COVERAGE AND COVERAGE RESTRICTIONS. WE HAVE NO DUTY TO PROVIDE COVERAGE UNLESS THERE HAS BEEN FULL COMPLIANCE WITH ALL THE CONDITIONS - SECTION V - OF THIS POLICY.

The words "you" and "your" in this policy refer to the named insured shown in the Declarations and all other persons or organizations qualifying as named insureds under this policy. The words "we", "us", and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under SECTION III - WHO IS AN INSURED, beginning on page 11.

All words and phrases that appear in quotation marks have special meaning. Refer to SECTION VI- DEFINITIONS beginning on page 19.

SECTION I - INSURING AGREEMENTS

In consideration of the payment of premium and in reliance upon representations you made to us during the process of obtaining this insurance and subject to the Limit of Insurance shown in Item 4 of the Declarations, and all the exclusions, terms and conditions of this policy, we agree with you as follows:

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**1. Insuring Agreement**

- a. We will indemnify the insured for "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right to associate with the "underlying insurer" and the insured to defend against any "suit" seeking those damages. But:

- (1) The amount we will indemnify for "ultimate net loss" is limited as described in SECTION IV - LIMIT OF INSURANCE;
- (2) At our discretion, we may investigate any "occurrence" and settle any resulting "claim" or "suit";
- (3) We have a duty to defend the insured against any "suits" to which this insurance applies:
 - (a) But which are not covered by any "underlying insurance" shown in the Declarations or by any other applicable primary policies that may apply; or
 - (b) If the applicable limit of "underlying insurance" is exhausted.

However, we will have no duty to defend the insured against any "suits" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply; and

- (4) Both our right and duty to defend any existing or future "suits" end when we have exhausted the applicable Limit of Insurance in indemnification of judgments or settlements under Coverages A and B.

No other obligation or liability to indemnify or perform acts or services is covered unless explicitly provided for under SECTION II - DEFENSE.

- b. It is agreed that this insurance only applies if:

- (1) The "bodily injury" or "property damage" occurs during the policy period of this policy;
- (2) With respect to your liability (other than under a contract) for "bodily injury" to your "employees" arising out of and in the course of their employment by you:
 - (a) Any "bodily injury" by disease is caused or aggravated by the conditions of that employment; and
 - (b) An "employee's" last day of last exposure to conditions causing or aggravating such disease occurs during the policy period of this policy; and

(3) The "bodily injury" or "property damage" is caused by an "occurrence", and such "occurrence" takes place in the "coverage territory".

- c. "Ultimate net loss" because of "bodily injury" includes damages sought by any person or organization for care or loss of services resulting at any time from the "bodily injury".

2. Exclusions

The insurance does not apply to:

- a. "Bodily injury" or "property damage" for which coverage is provided by "underlying insurance" written on a claims-made basis, including any renewal or replacement of such policy.
- b. "Bodily injury" or "property damage" either expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- c. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
 - (1) That the insured would have in the absence of the contract or agreement; or
 - (2) Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract";
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged; and
 - (c) The indemnitor insured's "underlying insurance" also deems these expenses to be damages.
- d. Liability imposed on the insured or the insured's insurer, under any of the following laws:
 - (1) Employees' Retirement Income Security Act of 1974 (E.R.I.S.A.) as now or hereafter amended, or any similar state or other governmental law;
 - (2) Any uninsured motorists, underinsured motorists, or automobile no-fault or first party "bodily injury" or "property damage" law; or
 - (3) Any workers compensation, unemployment compensation or disability benefits law or any similar law.
- e. The insured's liability (other than under an "insured contract") for "bodily injury" to:
 - (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
 - (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

But this exclusion e(1) and (2) applies only with respect to:

- (1) "Bodily injury" to any person in work subject to the Longshore and Harbor Workers Compensation Act (33 USC Section 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), and any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
- (2) "Bodily injury" to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an "employee" due to "bodily injury" arising out of or in the course of employment, or any amendments to those laws;
- (3) "Bodily injury" to a master or member of the crew of any vessel;
- (4) Fines or penalties imposed for violation of federal or state law;
- (5) Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws;
- (6) "Bodily injury" to an "employee" while employed in violation of law with the insured's actual knowledge or the actual knowledge of any of your "executive officers"; and
- (7) "Bodily injury" to an "employee" if such employment is subject to the workers compensation laws of the states of Massachusetts, Missouri, New Jersey, New York or any other state which requires unlimited Employers Liability coverage in conjunction with primary Workers Compensation policies.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of such injury.

f. "Bodily injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of such "bodily injury".

- g. (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of "pollutants":
 - (a) That are, or that are contained in any property that is:
 - (i) Being transported or towed by, handled, or handled for movement into, onto or from an "auto" covered by "underlying insurance";
 - (ii) Otherwise in the course of transit by or on behalf of the insured; or

- (iii) Being stored, disposed of, treated or processed in or upon an "auto" covered by "underlying insurance";
 - (b) At or from any premises, site or location which is or was at any time, owned or occupied by, or rented or loaned to, any insured;
 - (c) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of "waste";
 - (d) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as "waste" by or for any insured or any person or organization for whom any insured may be legally responsible; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
 - (i) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
 - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to, or assess the effects of "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to, or assess the effects of "pollutants", or
 - (b) "Claim" or "suit" by or on behalf of any governmental authority or others for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes materials to be recycled, reconditioned or reclaimed.

Paragraph (1)(e)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Paragraphs (1)(a) through (1)(d) and (1)(e)(i) do not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto" covered by "underlying insurance", or the parts of such an "auto", if:

- (1) The "pollutants" escapes or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury" or "property damage" does not arise out of the operation of any equipment listed in paragraph f(2) and f(3) of the definition of "mobile equipment".

Paragraphs (1)(c) through (1)(e) do not apply to "pollutants" that are not in or upon an "auto" covered by "underlying insurance" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of an "auto" covered by "underlying insurance"; and

- (2) The discharge, dispersal, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

Paragraphs (1)(b) and (1)(e)(i) of this exclusion do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire". As used herein, a "hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

- h. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or chartered, rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1) Watercraft while ashore on premises you own or rent;
 - (2) Watercraft you do not own that are:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge; or
 - (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft.
- i. "Bodily injury" or "property damage" arising out of the use of any "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.
- j. Liability assumed under any "insured contract" for "bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, revolution, or acts of terrorism.
- k. "Property damage" to:
- (1) Property you own;
 - (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
 - (3) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the "property damage" arises out of those operations; or
 - (4) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to liability assumed under a railroad sidetrack agreement.

Paragraph (4) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

- l. "Property damage" to "your product" arising out of it or any part of it.
- m. "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

- n. "Property damage" to "impaired property" or property that has not been physically injured, arising out of:
- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

- o. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work", or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

- p. "Bodily injury" or "property damage":

- (1) With respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
 - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
- (3) Resulting from the "hazardous properties" of "nuclear material", if:
 - (a) The "nuclear material"
 - (i) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
 - (ii) Has been discharged or dispersed therefrom;
 - (b) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) The "bodily injury" or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this subparagraph (c) applies only to "property damage" to such "nuclear facility" and any property thereat.

As used in this exclusion:

- (1) "Hazardous properties" include radioactive, toxic or explosive properties;
- (2) "Nuclear material" means "source material", "special nuclear material" or "by-product material";
- (3) "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

- (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
- (5) "Waste" means any waste material:
- (a) Containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content and
 - (b) Resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".
- (6) "Nuclear facility" means:
- (a) Any "nuclear reactor";
 - (b) Any equipment or device designed or used for:
 - (i) Separating the isotopes of uranium or plutonium,
 - (ii) Processing or utilizing "spent fuel", or
 - (iii) Handling, processing or packaging "waste";
 - (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
 - (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";
- and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- (7) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "Property damage" includes all forms of radioactive contamination of property.
- (q) Punitive or exemplary damages or related defense costs. This exclusion applies regardless of any other provisions of the policy or endorsements attached to it.
- (r) "Bodily injury" or "property damage" arising out of, resulting from, caused or contributed to by asbestos or exposure to asbestos; or the costs of abatement, mitigation, removal or disposal of asbestos. This exclusion also includes:
- (1) Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; and
 - (2) Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage.
- (s) Any loss, cost or expense arising out of, resulting from, caused by or contributed to by lead provided that such loss, cost or expense results from or is contributed to by the hazardous properties of lead. This exclusion includes, but is not limited to, any costs for abatement, mitigation, removal or disposal of paint, plumbing solder, pipes and fixtures, soil or other items containing lead.

This exclusion also includes, but is not limited to:

- (1) Any supervision, instructions, recommendations, requests, warnings or advice given or which should have been given in connection with the above; and

- (2) Any obligation to share damages with or repay someone else who must pay damages in connection with the above.
- t. Liability for an occurrence resulting directly or indirectly from the actual, alleged, or threatened sexual molestation or harassment, physical or mental abuse, or corporal punishment of a person by anyone.
- u. "Property damage" to the property of any insured while such property is in the care, custody, or control of another insured.

With respect to your liability (other than under a contract or agreement) for "bodily injury" to your "employees" arising out of and in the course of their employment by you, exclusions g., h., and i. do not apply.

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will indemnify the insured for "ultimate net loss" in excess of the "retained limit" because of "personal injury" or "advertising injury" to which this insurance applies. We will have the right to associate with the "underlying insurer" and the insured to defend against any "suit" seeking those damages. But:

- (1) The amount we will indemnify for "ultimate net loss" is limited as described in **SECTION IV - LIMIT OF INSURANCE**;
- (2) At our discretion, we may investigate any "offense" and settle any resulting "claim" or "suit";
- (3) We have a duty to defend the insured against any "suits" to which this insurance applies:
 - (a) But which are not covered by any "underlying insurance" shown in the Declarations or by any other applicable primary policies that may apply; or
 - (b) If the applicable limit of "underlying insurance" is exhausted.

However, we will have no duty to defend the insured against any "suits" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply; and

- (4) Both our right and duty to defend any existing or future "suits" end when we have exhausted the applicable Limit of Insurance in indemnification of judgments or settlements under Coverages A and B.

No other obligation or liability to indemnify or perform acts or services is covered unless explicitly provided for under **SECTION II - DEFENSE**.

- b. This insurance applies to:

- (1) "Personal injury" caused by an "offense" arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you; and
- (2) "Advertising injury" caused by an "offense" committed in the course of advertising your goods, products or services;

but only if the "offense" was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

- a. "Personal injury" or "advertising injury";
 - (1) For which coverage is provided by "underlying insurance" written on a claims-made basis, including any renewal or replacement of such policy;
 - (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;

- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured;
- (5) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement; or
- (6) Arising out of the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of "pollutants" at any time.
- (7) Arising out of, resulting from, caused or contributed to by asbestos or exposure to asbestos; or the costs of abatement, mitigation, removal or disposal of asbestos. This exclusion also includes:
 - (i) Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; and
 - (ii) Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage.
- (8) For an occurrence resulting directly or indirectly from the actual, alleged, or threatened sexual molestation or harassment, physical or mental abuse, or corporal punishment of a person by anyone.

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An "offense" committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

c. Any loss, cost or expense arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to, or assess the effects of "pollutants"; or
- (2) "Claim" or "suit" by or on behalf of any governmental authority or others for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes materials to be recycled, reconditioned or reclaimed.

d. "Personal injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of such "personal injury".

- e. Punitive or exemplary damages or related defense costs. This exclusion applies regardless of any other provisions of the policy or endorsements attached to it.
- f. Any loss, cost or expense arising out of, resulting from, caused by or contributed to by lead provided that such loss, cost or expense results from or is contributed to by the hazardous properties of lead. This exclusion includes, but is not limited to, any costs for abatement, mitigation, removal or disposal of paint, plumbing solder, pipes and fixtures, soil or other items containing lead.

This exclusion also includes, but is not limited to:

- (i) Any supervision, instructions, recommendations, requests, warnings or advice given or which should have been given in connection with the above; and
- (ii) Any obligation to share damages with or repay someone else who must pay damages in connection with the above.

SECTION II - DEFENSE

When we:

- (i) Have the duty to defend; or
- (ii) Investigate or settle any "offense", "occurrence", "claim" or "suit", and then only to the extent that "underlying insurance" is not responsible for the costs shown below in items 1. through 6.,

we will indemnify the insured for:

1. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations related to an accident arising out of the use of any vehicle to which this policy applies. We do not have to furnish these bonds.
2. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. We do not have to furnish these bonds.
3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of any "claim" or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
4. All costs taxed against the insured in any "suit" we defend.
5. "Pre-judgment interest" awarded against the insured on that part of any judgment covered under this policy. If we offer the applicable Limit of Insurance in settlement of a "claim" or "suit", we will not indemnify the insured for any "pre-judgment interest" imposed or earned after the date of such offer.
6. All interest earned on that part of any judgment within the Limit of Insurance after entry of the judgment and before we have indemnified the insured, offered to indemnify, or deposited in court that part of any judgment that is within the applicable Limit of Insurance.

Payments under this section of the policy, as well as payments for all expenses we incur, will not reduce the Limit of Insurance.

If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

1. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
2. This insurance applies to such liability assumed by the insured;

3. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
4. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
5. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
6. The indemnitee:
 - a. Agrees in writing to:
 - (1) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (2) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (3) Notify any other insurer whose coverage is available to the indemnitee; and
 - (4) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - b. Provides us with written authorization to:
 - (1) Obtain records and other information related to the "suit"; and
 - (2) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 2.c.(2) of COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Insuring Agreements), such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

1. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
2. The conditions set forth above, or the terms of the agreement described in paragraph 6. above, and no longer met.

SECTION III - WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Except with respect to any "auto", your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, or joint venture, or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Except with respect to:
 - a. Any "auto"; or
 - b. "Mobile equipment" registered in your name under any motor vehicle registration law;

each of the following is also an insured:

- a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no "employee" is an insured for:

- (1) "Bodily injury" or "personal injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company) or to a co-"employee" while in the course of his or her employment or while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (1)(b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by; or
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", any partner or member (if you are a partnership or joint venture) or any member (if you are a limited liability company).

- b. Any person (other than your "employee") or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
- e. Any person or organization qualifying as an insured under any policy of "underlying insurance". Coverage afforded such insureds under this policy applies only to injury or damage:
 - (1) Which is covered by this policy; and
 - (2) Which is covered by the "underlying insurance" or would be covered but for the exhaustion of such policy's limits of insurance.

This policy shall not afford such person or organization limits of insurance in excess of:

- (1) The minimum limit of insurance you agreed to provide; or
- (2) The limit of insurance under this policy

whichever is less.

- f. Any person or organization for whom you have agreed in writing prior to any "occurrence" or "offense" to provide insurance such as is afforded by this policy, but only with respect to operations performed by you or on your behalf, or facilities owned or used by you. This policy shall not afford such person or organization limits or insurance in excess of:

(1) The minimum limit of insurance you agreed to provide; or

(2) The limit of insurance under this policy

whichever is less.

3. With respect to:

a. Any "auto"; or

b. "Mobile equipment" registered in your name under any motor vehicle registration law;

any person is an insured while driving such "auto" or "mobile equipment" with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the "auto" or registered "mobile equipment".

However, except with respect to your partners, "employees", or members of their households, the owner or anyone else from whom you hire or borrow an "auto" is an insured only if that "auto" is a trailer connected to an "auto" you own.

But no person or organization is an insured under this paragraph 3 for:

a. "Bodily injury" to a co-"employee" of the person driving the "auto" or "mobile equipment";

b. "Property damage" to property owned by the employer of any person who is an insured under this provision;

c. Any "auto" you hire or borrow from one of your partners, "employees" or members of their households, if they are the owner of such "auto", unless:

(1) Insurance is afforded to that owner for such "auto" by "underlying insurance", or would be afforded under such "underlying insurance" but for exhaustion of such policy's limits of insurance; or

(2) Such "auto" is a trailer connected to an "auto" you own;

d. Any "auto" being used by a person employed in the business of selling, servicing, repairing, or parking "autos" unless they are your "employee"; or

e. The movement of property to or from an "auto" except your "employees" or partners, the lessees or borrowers of such "auto", and any "employees" of such lessees or borrowers.

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a named insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period set forth in Item 3 of the Declarations, whichever is earlier;

b. Coverage is applicable only in excess of the Limits of "underlying insurance" as shown in Item 5 of the Declarations, and you must add such organization to your "underlying insurance" as soon as practicable, advising us of such additions. We may then make adjustment of premium charges as called for in Condition 9 - Maintenance of Underlying Insurance;

c. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

d. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an "offense" committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a named insured in the Declarations.

SECTION IV - LIMIT OF INSURANCE

1. The Policy Aggregate Limit shown in Item 4 of the Declarations and the rules below fix the most we will indemnify regardless of the number of:
 - a. Insureds;
 - b. "Claims" made or "suits" brought; or
 - c. Persons or organizations making "claims" or bringing "suits".
2. The Policy Aggregate Limit is the most we will indemnify for:
 - a. All "ultimate net loss" under Coverage A and Coverage B combined, except "ultimate net loss" because of injury and damage arising from the "automobile hazard".
 - b. Each "occurrence" with regard to "ultimate net loss" because of injury and damage arising from the "automobile hazard".
3. If the Policy Aggregate Limit is paid prior to this policy's termination date for losses other than losses arising from the "automobile hazard", this policy's premium is fully earned.
4. The Policy Aggregate Limit applies separately to each consecutive annual period, and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Insurance.

SECTION V - CONDITIONS**1. Appeals**

In the event the insured or any "underlying insurer" elects not to appeal a judgment for damages covered by this policy and which exceeds the "retained limit", we may elect to do so. We shall be liable, in addition to the Limit of Insurance, for all costs and expenses incurred and interest on judgments incidental to such an appeal and for all such costs, expenses and interest on appeals in connection with our right and duty to defend the insured under this policy.

2. Bankruptcy

Bankruptcy, insolvency, or receivership of the insured, the insured's estate or of any "underlying insurer" will not relieve us of our obligations under this policy. With regard to bankruptcy, insolvency, or receivership of any "underlying insurer", this policy shall not apply as a replacement of such bankrupt or insolvent insurer and our Limits of Insurance will apply only in excess of the required Limit(s) of Insurance stated in Item 5 of the Declarations of this policy.

3. Cancellation**a. CANCELLATION OF POLICIES IN EFFECT LESS THAN 60 DAYS**

If this policy has been in effect for less than 60 days, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

b. CANCELLATION OF POLICIES IN EFFECT FOR 60 DAYS OR MORE

If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy prior to the:

- (1) Expiration of the policy term; or

(2) Anniversary date,

stated in the policy only for one or more of the following reasons:

- (a) Nonpayment of premium;
- (b) An act or omission by the insured or his or her representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining this policy, continuing this policy or presenting a claim under this policy;
- (c) Increased hazard or material change in the risk assumed that could not have been reasonably contemplated by the parties at the time of assumption of the risk;
- (d) Substantial breach of contractual duties, conditions or warranties that materially affects the insurability of the risk;
- (e) A fraudulent act against us by the insured or his or her representative that materially affects the insurability of the risk;
- (f) Willful failure by the insured or his or her representative to institute reasonable loss control measures that materially affect the insurability of the risk after written notice by us;
- (g) Loss of facultative reinsurance, or loss of or substantial changes in applicable reinsurance as provided in G.S 58-41-30;
- (h) Conviction of the insured of a crime arising out of acts that materially affect the insurability of the risk;
- (i) A determination by the Commissioner of Insurance that the continuation of the policy would place us in violation of the laws of North Carolina; or
- (j) You fail to meet the requirements contained in our corporate charter, articles of incorporation or by-laws when we are a company organized for the sole purpose of providing members of an organization with insurance coverage in North Carolina.

We will mail or deliver written notice of cancellation to the first Named Insured at least:

- (i) 15 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- (ii) 30 days before the effective date of cancellation if we cancel for any other reason.

- c. Cancellation for nonpayment of premium will not become effective if you pay the premium amount due before the effective date of cancellation.
- d. We may also cancel this policy for any reason not stated above provided we obtain your prior written consent.

4. The following provisions are added and supersede any other provisions to the contrary:

a. NONRENEWAL

- (1) If we elect not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of nonrenewal at least 45 days prior to the:
 - (a) Expiration of the policy if this policy has been written for one year or less; or
 - (b) Anniversary date of the policy if this policy has been written for more than one year or for an indefinite term.
- (2) We need not mail or deliver the notice of nonrenewal if you have:
 - (a) Insured property covered under this policy, under any other insurance policy;
 - (b) Accepted replacement coverage; or
 - (c) Requested or agreed to nonrenewal of this policy.

(3) If notice is mailed, proof of mailing will be sufficient proof of notice.

b. The written notice of cancellation or nonrenewal will:

(1) Be mailed or delivered to the first Named Insured and any designated mortgagee or loss payee at their addresses shown in the policy, or if not indicated in the policy, at their last known addresses; and

(2) State the reason or reasons for cancellation or nonrenewal.

5. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first named insured shown in the Declarations is authorized to make changes in the terms of this policy upon our giving written consent. This policy's terms can be amended or waived only by endorsement to this policy issued by us.

6. Duties in the Event of Occurrence, Offense, Claim or Suit

a. You must see to it that we or our authorized representative are notified as soon as practicable of an "occurrence" or an "offense" which may result in a "claim". To the extent possible, notice should include:

(1) How, when, and where the "occurrence" or alleged "offense" took place;

(2) The insured's name and address;

(3) The names and addresses of any injured persons or witnesses; and

(4) The nature and location of any injury or damage arising out of the "occurrence" or "offense".

Notice of an "occurrence" or an "offense" is not notice of a "claim".

b. If a "claim" is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the "claim" or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we also receive written notice of the "claim" or "suit" as soon as practicable.

c. You and any other insured involved in such "claim" or "suit" must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, or settlement of the "claim" or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insureds will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

e. No insureds shall in any way jeopardize our rights after an "occurrence" or "offense".

7. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period set forth in Item 3 of the Declarations and up to three years afterward.

8. Inspection and Surveys

We have the right but are not obligated to:

a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes to such conditions.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers of the public. We also do not warrant that conditions:

- a. Are safe or healthful; or
- b. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations on our behalf.

9. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us under this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not indemnifiable under the terms of this policy or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

10. Maintenance of Underlying Insurance

- a. You must keep the "underlying insurance" described in Item 5 of the Declarations, or renewal or replacement policies not more restrictive in their terms and conditions, in full force and effect during the policy period of this policy. The Limits of Insurance must be maintained without reduction other than by payment of losses covered thereunder. You must also inform us within 30 days of any cancellation of any policy of "underlying insurance", or replacement of any policy of "underlying insurance".
- b. You must notify us immediately of any changes to the terms of any "underlying insurance" policies. We may adjust premium charges under this policy from the effective date of such changes to the terms of any "underlying insurance".
- c. Your failure to comply with the foregoing paragraphs a. and b. will not invalidate this policy, but in the event of such failure, we shall be liable under this policy only to the extent that we would have been liable had you complied with these obligations.

11. Other Insurance

If other valid and collectible insurance is available to the insured for "ultimate net loss" we cover under this policy, our obligations under this policy are limited as follows:

- a. As this insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, except such insurance as is specifically purchased to apply in excess of this policy's Limit of Insurance, we will indemnify only our share of the amount of "ultimate net loss", if any, that exceeds the sum of:
 - (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (2) The total of all deductible and self-insured amounts under this or any other insurance.
- b. We will have no duty under Coverage A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all other insurers.

12. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first named insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first named insured, but not if such audit premium is less than the Minimum Premium shown in the Declarations.
- c. The first named insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

13. Premiums

The first named insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

14. Representations

By accepting this policy, you agree that:

- a. The information shown on the Declarations is accurate and complete;
- b. The information is based upon representations you made to us in your application(s) for this policy;
- c. We have issued this policy in reliance upon your representations; and
- d. Except as otherwise provided in this policy or by law, this policy is void in any case of fraud or if you intentionally conceal or misrepresent any material facts concerning this policy, in your application for this policy or otherwise.

15. Separation of Insureds

Except with respect to the Limit of Insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies:

- a. As if each named insured were the only named insured; and
- b. Separately to each insured against whom "claim" is made or "suit" is brought.

16. Sole Agent

The named insured first shown in Item 1 of the Declarations is authorized to act on behalf of all insureds with respect to giving or receiving notice of cancellation or nonrenewal, receiving refunds, and agreeing to any changes in this policy.

17. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any indemnification we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

Any recoveries shall be applied first to reimburse any interests (including the insured) that may have paid any amounts in excess of our liability under this policy; then to reimburse us for any indemnity hereunder; and lastly to reimburse such interests (including the insured) as to which this policy is excess, as are entitled to the residue, if any.

When we assist in pursuit of the insured's rights of recovery, reasonable expenses resulting therefrom shall be apportioned among all interests in the ratio of their respective recoveries.

If there should be no recovery as a result of proceedings instituted solely at our request, we shall bear all expenses of such proceedings.

18. **Transfer of Your Rights and Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

19. **When Loss Payable**

Our liability for any portion of "ultimate net loss" shall not apply until the insured or any "underlying insurer" shall be obligated to actually pay the full and complete amount of the "retained limit". When "ultimate net loss" has been finally determined, the insured may make "claim" for indemnity under this policy as soon as practicable thereafter. Such insured's obligation to pay any amount of "ultimate net loss" must have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant or the claimant's legal representative and us.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION VI - DEFINITIONS

1. **"Advertising injury"** means injury arising out of one or more of the following "offenses".
 - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - b. Oral or written publication of material that violates a person's right of privacy;
 - c. Misappropriation of advertising ideas or style of doing business; or
 - d. Infringement of copyright, title or slogan.
2. **"Auto"** means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. However, "auto" does not include "mobile equipment".
3. **"Automobile hazard"** means liability arising out of the ownership, maintenance, use or entrustment of any "auto". Use includes operation and "loading or unloading".
4. **"Bodily injury"** means bodily injury, sickness, or disease sustained by a natural person. This includes death, shock, fright, mental anguish, mental injury, or disability which results from any of these at any time.
5. **"Claim"** means any demand upon the insured for damages or services alleging liability of the insured as the result of an "occurrence" or "offense".
6. **"Coverage territory"** means anywhere in the world if the insured's responsibility to pay damages is determined in a "suit" on the merits, in the United States of America (including its territories and possessions), Puerto Rico or Canada, or in a settlement we agree to.
7. **"Employee"** includes a "leased worker". "Employee" does not include a "temporary worker".
8. **"Executive officer"** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

9. **"Impaired property"** means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.

10. **"Insured contract"** means:

- a. A contract for a lease of premises. However, that portion of a contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law for injury to persons or property in the absence of any contract or agreement.

Paragraph f does not include that part of any contract or agreement:

- (1) That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities;
- (4) That pertains to the loan, lease or rental of an "auto" to you or any of your employees, if the "auto" is loaned, leased or rented with a driver; or
- (5) That holds a person or organization engaged in the business of transporting property by "auto" for hire, harmless for your use of an "auto" over a route or territory that person or organization is authorized to serve by public authority.

11. **"Leased worker"** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
12. **"Loading or unloading"** means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
13. **"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c., or d. immediately preceding that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c., or d. of this section maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.
14. **"Occurrence"** means
- a. With respect to "bodily injury" or "property damage", an accident, including continuous or repeated exposure to substantially the same general harmful conditions. This does not apply to your liability (other than under a contract or agreement) for "bodily injury" to your "employees" arising out of and in the course of employment by you; or

- b. With respect to your liability (other than under a contract or agreement) for "bodily injury" to your "employees" arising out of and in the course of employment by you, "bodily injury" caused by accident or disease.

15. **"Offense"** means any of the "offenses" included in the definitions of "advertising injury" or "personal injury".

16. **"Personal injury"** means injury, other than "bodily injury", arising out of one or more of the following "offenses":

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies if done by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

17. **"Pre-judgment interest"** means interest added to a settlement, verdict, award or judgment based on the amount of time prior to the settlement, verdict, award or judgment whether or not made part of the settlement, verdict, award or judgment.

18. **"Products-completed operations hazard":**

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Those products or operations for which the applicable classification, under a policy of "underlying insurance", states that products-completed operations are subject to that policy's General Aggregate Limit.

19. **"Property damage"** means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

20. **"Retained limit"** means the greater of:
- a. The sum of amounts applicable to any "claim" or "suit" from:
 - (1) "Underlying insurance", whether such "underlying insurance" is collectible or not; and
 - (2) Other collectible primary insurance; or
 - b. The "self-insured retention".
21. **"Self-insured retention"** means the amount in Item 4 of the Declarations.
22. **"Suit"** means a civil proceeding in which damages because of "advertising injury", "bodily injury", "personal injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or submits with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
23. **"Temporary worker"** means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
24. **"Ultimate net loss"** means the total amount of damages for which the insured is legally liable in payment of "bodily injury", "property damage", "personal injury", or "advertising injury". "Ultimate net loss" must be fully determined as shown in Condition 19. - When Loss Payable. "Ultimate net loss" shall be reduced by any recoveries or salvages which have been paid or will be collected; but the amount of "ultimate net loss" shall not include any expenses incurred by any insured, by us or by any "underlying insurer".
25. **"Underlying insurance"** means the coverage(s) afforded under insurance policies designated in Item 5 of the Declarations and any renewals or replacements of those policies.
26. **"Underlying insurer"** means any company issuing any policy of "underlying insurance".
27. **"Your product"** means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or
 - (3) A person or organization whose business or assets you have acquired; and
 - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- "Your product" includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product", and
 - b. The providing of or failure to provide warnings or instructions.
- "Your product" does not include vending machines or other property rented to or located for the use of others but not sold.
28. **"Your work"** means:
- a. Work or operations performed by you or on your behalf; and
 - b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.