

# STANDARD CONSTRUCTION SPECIFICATIONS SOUTHERN SHORES

## GENERAL REQUIREMENTS

### 1. DEFINITIONS AND ABBREVIATIONS

Unless otherwise defined in the Contract Documents, the following definitions and abbreviations shall apply whenever used. The words directed, required, permitted, ordered, requested, constructed, designated, considered, necessary, prescribed, approved, acceptable, satisfactory, or words of like import, refer to actions, expressions and prerogatives of the Engineer.

#### 1.01 Definitions

**Acceptance of Work** - All work required by the Contract Documents will be considered accepted upon official action by the Town Council of the Town of Southern Shores. In order to qualify for acceptance, all work specified in the Contract Documents must be completed unless specifically deleted by Contract change orders.

**Acts of God** - An act of God is to be construed to mean an earthquake, flood, cloudburst, tornado, hurricane or other phenomenon of nature of catastrophic proportions or intensity.

**Addenda** - Supplemental written specifications or drawings issued prior to execution of the Contract which modify or interpret the Contract Documents by addition, deletion, clarification or correction.

**Advertisement** - The public announcement inviting bids for work to be performed or materials to be furnished.

**Approved Equal** - A product, component or process whose use in or on a particular project is specified as a standard for comparison purposes only. The "equal" product, component, or process, shall be the same or better than that named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer, pursuant to Subsection 6.07. Whenever a manufacturer's name brand or model is mentioned, it is to be understood that the phrase "approved equal" is assumed to follow thereafter, whether it does in fact or not.

**Attorney** - The Town Attorney of the Town of Southern Shores, North Carolina.

**Bid** - A Proposal.

**Bid Bond** - The bond required to be submitted with each Proposal, as described in the Proposal Form as a Proposal Guaranty, which assures that the Bidder will enter into a Contract if his Proposal is accepted.

**Bidder** - Any individual, firm, co-partnership, corporation, or combination thereof, submitting a Proposal in response to the advertisement calling for Bids on the work contemplated either directly or through a duly authorized representative.

**Change Order** - A written order, issued by Engineer to the Contractor, covering changes in either the Plans, specifications or quantities within the scope of the Contract after award and as further described in Subsections 4.05 and 4.06.

**Contract** - The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment and construction of the work for the Project. The Contract shall include the Contract Documents, certificates of insurance (as specified in Section 7.06 below), and Performance Bond and Payment Bond (as specified in the Proposal Form); also any and all supplemental agreements amending or extending the work completed which may be required to complete the work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations or amendments or extensions to the Contract and include Contract change orders.

**Contract Documents** – Those documents identified in Section 4.03.A.

**Contract Item** - A specific unit of work for which a price or basis of payment is provided in the Contract.

**Contract Form** – That certain document entitled “Southern Shores Street Improvement Project Year Two” to be executed by and between the Town and Contractor after the award of the Contract to the Contractor but before work under the Contract begins.

**Contract Price** - Either the unit prices or lump sum price or prices named in the Proposal or in properly executed change orders.

**Contract Time** – This term is defined in Section 8.04, below.

**Contract Review Board** - The Town of Southern Shores Town Council is the Contract Review Board.

**Contract Time** - The number of days stated in the Contract Documents for the completion of the work.

**Contractor** - Any individual, firm, co-partnership, corporation or any combination thereof, who has or have entered into a Contract with the Town for a particular project. Unless context clearly requires otherwise, the term Contractor shall be deemed to refer to the Contractor who entered into the Contract to perform work under the Project.

**Day** - Unless otherwise designated, days as used in these Standard Specifications will be understood to mean working days. A working day is any and every day shown on the calendar, excluding Saturdays, Sundays and legal holidays.

**Department of Public Works** - The Department of Public Works of the Town of Southern Shores, North Carolina, acting directly or through properly authorized officials, employees and agents limited to the particular duties entrusted to them.

**Easements** - The right to use the property of another for a specific purpose or purposes as set forth in a document.

**Engineer** - The engineer or Environmental Permitting Consultant who represents the Owner, who shall perform his work under the direction of the Owner and, with the approval of the Town, may

perform such work through properly authorized officials, employees and agents limited to the particular duties entrusted to them.

**Equipment** - The machinery, accessories, appurtenances, and manufactured articles to be furnished and/or installed under the Contract.

**Improvement** - General term encompassing all phases of work to be performed under the Contract and is synonymous to the term project.

**Inspector** - The authorized representative of the Engineer whose instructions and decisions shall be limited to the particular duties and responsibilities entrusted to him and making detailed inspections of any or all portions of the work or materials therefore.

**Lump Sum** - A method of payment providing for one all-inclusive payment for the work described to be done, complete and accepted without further measurement, as such work is covered under the applicable lump sum pay item.

**Notice** - A written communication delivered by hand or by mail to the authorized individual, member of the firm, or officer of the corporation for which it is intended. If delivered or sent by mail, it shall be addressed to the last known business address of the individual firm or corporation. In the case of a Contract with two or more persons, firms, or corporations performing work under such Contract, notice to one shall be deemed notice to all.

**NCDOT Standard Specifications** - The latest addition of the Specification Document published by the State of North Carolina entitled Standard Specifications for Roads and Structures - North Carolina Department of Transportation. This document is available from the North Carolina Department of Transportation, Raleigh, North Carolina.

**Owner** - The Town of Southern Shores, Dare County, North Carolina, acting through its legally constituted Town Council. The term Owner is synonymous with the term Town.

**Pavement** - The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

**Performance Bond and Payment Bond** - The Bonds submitted by the Contractor and his surety, as specified in the Contract and as more fully described in the Proposal Form.

**Plans** - The official Project Plans and Standard Plans, profiles, cross-sections, elevations, details and other working supplementary detail drawings or reproductions thereof approved by the Engineer which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets and all are a part of the Contract Documents regardless of the method of binding.

In the above definitions, the following terms are defined:

A) **Standard Plans** - Details of structures, devices, typical sections, or instructions adopted by Town as a standard and referred to in the Contract Documents.

B) **Project Plans** - Specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same may apply.

**Project** - General term encompassing all phases of the Work to be performed under the Contract and is synonymous to the term improvement.

**Proposal** - The offer of a Bidder, submitted on Owner's official Proposal Form, to perform stated work at the prices quoted in such Proposal. The term Bid is synonymous with the term Proposal.

**Proposal Form** – That certain document entitled “Proposal”, which describes the procedures for bidding on the “Southern Shores Street Improvement Project Year Two” and the possible awarding of a contract for said project, as said document is considered prior to completion by a Bidder.

**Proposal Guaranty (Bid Bond)** - The security furnished with a Proposal to ensure that the Bidder will enter into the Contract if his Proposal is accepted.

**Provide** - When related to an item of work, the word `provide' shall be understood to mean furnish and install the work complete in place.

**Reference Specifications** - Bulletins, standards, rules, methods of analysis or test, codes and specifications of other agencies, engineering societies or industrial associations referred to in the Contract Documents. All such references specified herein refer to the latest edition thereof, including any amendments thereto which are in effect and published at the time of advertising for Bids, or of issuing the permit for the project.

**Right-of-Way** - A general term denoting public land, property or interest therein acquired for or devoted to a public street, public access or public use.

**Roadway** - That portion of the street and its appurtenances between curbs, gutters, or ditches primarily used for vehicular traffic.

**Scheduled Closing Time** - The time and date as set forth in the Request for Bids or any extensions thereof provided by addenda.

**Shop Drawings** - Supplementary plans or data which the Contract requires the Contractor to submit to the Engineer explaining equipment, methods and materials proposed for use.

**Shown** - As used herein, the word shown, or as shown, shall be understood to refer to work shown on the Plans in the Contract Documents.

**Special Provisions** - Requirements peculiar to the project and changes and modifications to the Standard Specifications.

**Specifications** – the Standard Specifications.

**Specified** - As used herein, the word specified or as specified means as required by the Contract Documents.

**Standard Specifications** - The terms, directions, provisions and requirements set forth herein.

**Station** - A distance of 100 feet measured horizontally along the established centerline of the street, sewer, waterway, canal or other work, unless specified otherwise.

**Street** - Any street, avenue, boulevard, alley, lane, bridge, bicycle path, road, public thoroughfare or public way and any land over which a right-of-way has been obtained or granted for the purpose of public travel.

**Subcontractor** - An individual, partnership, firm, corporation or any combination thereof to whom the Contractor sublets part of the Contract.

**Surety** - Any firm or corporation authorized in the State of North Carolina executing a surety bond or bonds payable to the Town securing the performance of the Contract either in whole or in part.

**Ton** - A short ton of 2000 lbs.

**Town** - The Town of Southern Shores, Dare County, North Carolina, acting through its legally constituted Town Council or, when so delegated or authorized, through its Owner. The term Owner is synonymous with the term Town

**Unit Price** - A Contract item of work providing for payment based on an existing unit of measurement; e.g. linear foot or cubic yard.

**Use of Pronoun** - As used herein, the singular shall include the plural, and the plural the singular; any masculine pronoun shall include the feminine or neuter gender; and the term 'person' includes natural person or persons, firms, co-partnerships, corporations, or associations or combinations thereof.

**Utility** - Tracks, overhead or underground wires, pipelines, conduits, ducts, or structures owned, operated or maintained in or across the public right-of-way or easement.

**Work** - All material, labor, tools, plant, vessels, equipment and all appliances, machinery, transportation or appurtenances necessary to perform and complete the Contract and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure.

## 1.02 ABBREVIATIONS

AAN American Association of Nurserymen

AASHTO American Association of State Highway and Transportation Officials

ACI American Concrete Institute

AGA American Gas Association

AED Associated Equipment Distributors

AGC Associated General Contractors of America

AIA American Institute of Architects

AISC American Institute of Steel Construction

AISI American Iron and Steel Institute

ANSI American National Standards Institute, Inc.

APWA American Public Works Association

ASCE American Society of Civil Engineers

ASLA American Society of Landscape Architects

ASME American Society of Mechanical Engineers

ASTM American Society for Testing and Materials

AWPA American Wood Preservers Association

AWS American Welding Society

AWWA American Water Works Association  
CRSI Concrete Reinforced Steel Institute  
DCM Division of Coastal Management NCDENR  
DWQ Division of Water Quality NCDENR  
EPA Environmental Protection Agency  
FHWA Federal Highway Administration, US Department of Transportation  
FSS Federal Specification and Standards, General Services Administration  
GS General Statutes of North Carolina  
ITE Institute of Traffic Engineers  
NEC National Electrical Code  
NEMA National Electrical Manufacturer's Association  
NLMA National Lumber Manufacturer's Association  
NCAC North Carolina Administrative Code  
NCDENR North Carolina Department of Environment and Natural Resources  
NCDOT North Carolina Department of Transportation  
OSHA Occupational Safety and Health Administration  
PCA Portland Cement Association  
UL Underwriter's Laboratories, Inc.  
USASI United States of America Standards Institute  
USACE United States Army Corp of Engineers

## 2. PROPOSAL REQUIREMENTS

The proposal requirements are contained the Proposal Form.

## 3. AWARD AND EXECUTION OF CONTRACT

Provisions relating to the award and execution of the Contract are provided in the Proposal Form.

## 4. SCOPE OF WORK

### 4.01 Scope of Work

- A. Road repairs, patching, and resurfacing improvements in accordance description in contract and typical sections in appendices.

### 4.02 Plans and Specifications

- A. Plans, Specifications and other Contract Documents will govern the work to be done. Anything mentioned in the Specifications and not shown on the Plans and typical sections, or anything shown on the Plans and not mentioned in the Specifications, shall be of like effect as though shown or mentioned in both. Specifications and Plans referred to in any of the Contract Documents shall be considered as being included in the document in which such reference is made. When a particular standard or specification is referred to in the Contract Documents, such reference shall be to the standard or specification including officially adopted revisions or amendments thereto which are in force at the time of advertising for Bids, unless otherwise provided, in writing, by the Town.

#### 4.03 Precedence of Contract Documents

- A. The Contract shall be composed of each and every one of the following listed component parts and all approved revisions thereto (collectively, the “Contract Documents”):
  - 1. Change Orders
  - 2. Contract Form
  - 3. Addenda to the Special Provisions
  - 4. Special Provisions
  - 5. Addenda to Standard Specifications
  - 6. Standard Construction Specifications
  - 7. Typical Sections
  - 8. Mapping of Road Locations
  - 9. Instructions to Bidders contained in the Proposal Form.
  - 10. Proposal

#### 4.04 Conflict of Provisions

- A. In the event of any conflicting provisions or requirements between the component parts of this Contract, the component part having the lowest number, as established in Subsection 4.04 above, shall govern.
- B. Conflicting provisions or requirements in the Contract Documents shall in no way relieve the performance bond and public liability insurance of their respective and specific protection to the Contractor, provided, however, that the sequence provided in Section 4.04 does not conflict with the intent of or harm the product or work in any way. In case of such conflict which would alter the intent of or harm the product or work, the requirement which, in the opinion of the Engineer or Town, will result in the best product or work will govern. It is hereby agreed that the entire project shall be completed in accordance with the full intent of the Contract, regardless of conflicting statements, omissions, or errors. The intent of the drawings and Specifications is to outline and control the work in a manner necessary to result in the best completely finished product practicable, at a minimum cost, incorporating all items. Any omissions in the Plans and Specifications pertinent to the requirements of the specified items are unintentional. If such are found, the Contractor will be required to perform the work in a customary workmanlike manner to achieve the intent as stated above, and the Engineer or Town will make his or its decisions to be equitable to all concerned. To accomplish the intent of this Contract, the Contractor will be required to maintain adequate competent supervisory personnel on the project at all times, to be responsible for all work being done in accordance with the intent of the Plans and Specifications, whether or not the Engineer is, or is not, present. Should the Engineer or his authorized representative find faulty work on any item at any time in the Contract, he shall so inform the Contractor and the Contractor will be required to correct such work by completely removing and replacing, if necessary, all to the satisfaction of the Engineer or Town, and at no cost to the Owner.

- C. It shall be definitely understood that omissions of one or more of the documents comprising the Contract Documents shall not be construed as conflicting provisions. Any requirement given in one documents comprising the Contract Document shall be known to be binding as though it is repeated in all Documents alike. The intent of the Contract is to combine all requirements of all documents comprising the Contract Documents into one.

#### 4.05 Changes in the Work

- A. The Engineer at the direction of the Owner may at any time, by written order, make changes in the Plans and/or Specifications and within the general scope thereof. These changes may be in the Contract or result in addition to or deduction from the work to be performed, or the materials to be furnished pursuant to the Contract. Estimated quantities in the Proposal are primarily for bid purposes. No employee, agent, or representative of the Town, with the exception of the Owner, has any power to approve any change in the Contract, and it is the responsibility of the Contractor, before proceeding with any change, to satisfy himself that the change has been properly authorized by the Engineer. No change for any extra work, or any other change in the Contract, will be allowed unless the extra work or change has been authorized in writing by the Owner and the price, therefore, is stated in such a written authority, provided however, that the Engineer may, in the case of an emergency, authorize changes in the field. In no case shall any payment be made for any changes without first the written change order being agreed to and signed by both the Contractor and the Owner. Nothing provided herein shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for extra work or materials will be allowed.
- B. The estimate of quantities of work to be done is tabulated in the Proposal and, although stated with as much accuracy as possible, is approximate only and is assumed solely for the basis of calculation upon which the award of Contract shall be made. Payment to the Contractor will be made on the measurement of the work actually performed by the Contractor as specified in the Contract Documents. The Owner reserves the right to increase or diminish the amount of any class of work as may be deemed necessary.
- C. If the actual quantity of any unit item as stated in the Proposal increases or decreases by 25 percent or less, payment for the actual quantity shall be made at the unit price stated in the Proposal. If the actual quantity of any unit item is less than 75 percent of the quantity stated in the Proposal, the Contractor may request, with appropriate documentation, a negotiation of the unit price for that item. Such negotiation shall be at the sole discretion of the Owner. If the actual quantity of any unit item is more than 125 percent of the quantity stated in the Proposal, the Owner may require an equitable reduction of the unit price for that item and the Contract shall be modified accordingly.

#### 4.06 Changed Conditions

- A. The Contractor shall notify the Engineer of changed work site conditions upon their discovery and before they are disturbed. If the Engineer is not given written notice, the Contractor will be deemed to have waived any claim or claims for extra



compensation in any manner arising out of the changed or unusual conditions. Changed conditions are as follows:

- 1) Subsurface or latent physical conditions differing materially from those represented in the contract; or,
- 2) Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work.

- B. The Engineer will promptly investigate all changed conditions. If the Engineer determines that the changed conditions will materially increase or decrease the costs of any portion of the work, the Owner will make an equitable adjustment in the amount of compensation to be paid for the performance of that part of the work involved, the time required, or both. If the Engineer determines that the changed conditions do not justify an adjustment in compensation, and the contractor disagrees with the Engineer's determination, the contractor may submit a written notice of dispute to the Engineer.
- C. In any event, the Contractor shall not be relieved from his obligations to resume construction operations pending a decision as to the validity of a claim, or pending the execution of negotiated agreement to cover additional costs of a claim recognized under the provisions of this section, unless permitted to do so by Owner.

#### 4.07 Disputed Work

- A. If the Contractor considers that a part of the required work is outside the scope of the Contract, or considers any decision of the Engineer to be unfair, or otherwise has a dispute with regard to the performance under the Contract, the contractor shall:
  - 1) immediately give oral notice to the Engineer and Owner;
  - 2) before performing the work at issue, obtain a written order from the Owner;
  - 3) within 24 hours of receiving the written order, confirm the notice of dispute in writing; and
  - 4) within ten calendar days after receipt of the written order, file a written protest with the Owner stating clearly and in detail the basis of dispute, and include an itemized statement of any extra costs which have resulted or would result from the disputed work.
- B. If the Contractor fails to comply with the above procedure, the Owner's ruling shall be final and conclusive and the Contractor shall have no claim for additional compensation or time.
- C. Although not to be construed as proceeding under extra work provisions, the Contractor shall keep and furnish records of all disputed work.
- D. Resolution of claims shall be per specification section 7.10 DISPUTE SETTLEMENT.

#### 4.08 Extra Work

- A. The Owner shall have the right to require, and the Contractor agrees to do, extra work over and above that which is indicated by the Contract Documents and covered by the unit prices of the Contract or negotiated price or prices, which logically forms a part of the Contract, arising from reasonably unforeseeable conditions, changed requirements or new information. Such additional work shall be undertaken only upon written instructions from the Owner. Payment for extra work will be made pursuant to Subsection 9.07.

### 5. CONTROL OF WORK

#### 5.01 Authority of and Coordination between the Owner and Engineer

- A. The Contractor shall perform all work to the satisfaction of the Engineer and Owner. The Contract and Specifications give the Owner authority over the work. For the purpose of determining the Contractor's duties, liabilities or entitlement to compensation or liability for damages, the decision of the Owner will be final on all questions including, but not limited to, the following:
  - 1) Quality and acceptability of materials and work;
  - 2) Classification and measurement of unit price work;
  - 3) Acceptability of rates of progress on the work;
  - 4) Interpretation of plans and specifications;
  - 5) Fulfillment of the Contract by the Contractor; and,
  - 6) Payments under the Contract.
- B. The Contractor shall at all times carry out and fulfill the instructions and directions of the Engineer or Owner, as applicable, relative to the work.
- C. Upon failure on the part of the Contractor to comply with any reasonable order made under the provisions of Contract, the Owner shall have the authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the Contractor.
- D. The Owner has the authority to suspend work for causes set forth in Section 8, particularly Subsection 8.05.
- E. The work will not be considered complete until it has passed final inspection by the Engineer and is accepted by the Owner and met warranty requirements. Interim approval of the work by the Engineer during progress of the work signifies favorable opinion and qualified consent; it does not carry with it certification, assurance of completeness, assurance of quality, or assurance of accuracy concerning details, dimensions, and quantities. Such approval will not relieve the Contractor from responsibility for errors, for improper fabrication, for failure to conform to requirements, or for other deficiencies.
- F. The Engineer shall have authority to make decisions with regard to the Project to the extent that those decisions relate to the technical aspects of the work to be

performed under the Contract. Notwithstanding the foregoing, the Town hereby reserves the right to review and revise any decision made by the Engineer with regard to the Project, the Contract, or the Contract Documents.

- G. Notwithstanding any other provision contained in these Specifications, the Town shall retain authority to make decisions with regard to the Project, the Contract, or the Contract Documents, including, without limitation, the interpretation of conflicting provisions in the Contract Documents, the decision as to whether to enforce provisions of the Contract Documents, and whether to make payment to the Contractor. In making any decision related to the Project, the Contract, or the Contract Documents, the Town may, in its sole discretion, consult with the Engineer or any other person or entity.

#### 5.02 Authority and Duties of Inspectors

- A. Inspectors have the authority to:
  - 1) Inspect all work done and materials furnished including preparation, fabrication, or manufacture of materials to be used;
  - 2) Report to the Engineer or Owner about the progress of the work and the manner it is performed;
  - 3) Report to the Engineer or Owner and notify the Contractor when materials furnished or work performed by the Contractor fail to meet the requirements of the plans and specifications; and
  - 4) Perform such other tasks that may be delegated by the Owner or Owner.
- B. Inspectors are not authorized to:
  - 1) Accept work; or,
  - 2) Alter or waive the provisions of the Contract.
- C. Failure of the Inspector or Engineer to call the attention of the Contractor to faulty work or infringements upon Plans or Specifications shall not constitute acceptance of said work.

#### 5.03 Inspection

- A. The Contractor shall allow the Engineer or Owner every reasonable facility necessary to obtain information about type and quality of materials used in the work, methods used to complete the work, and progress of the work. The Engineer and the inspector shall be allowed access to all parts of the work to ascertain whether or not the work is performed in accordance with the requirements and intent of the Contract.
- B. The Contractor shall furnish, at no expense to the Owner, samples required for testing purposes. The Contractor shall, at any time before final acceptance of the work, remove or uncover portions of the work as directed by the Engineer or Owner. The Contractor shall restore the portions of the work to the standard required by the Contract. If the exposed work is acceptable, the uncovering and restoring of the work will be paid for as extra work. If the exposed work is unacceptable, the uncovering and restoring of the work shall be at the expense of the Contractor. Any work done or materials used without approval of the Engineer or Owner may be ordered removed and replaced at no expense to the Owner.

- C. When the work affects or may affect property of any other unit of government, political subdivision, utility, or railroad corporation, representatives of that organization shall have the right to inspect the work. Such inspection shall not make any other unit of government, political subdivision, utility, or any railroad corporation a party to the Contract and shall not interfere with the rights of the parties of the Contract.

#### 5.04 Authority of Contractor

- A. The Contractor shall notify the Owner, Owner and Engineer in writing of the name, address and telephone number (day and night) of his superintendent who will act as the Contractor's representative and who shall have the authority to act in all matters relating to this Contract. The superintendent shall have full authority to carry out all the provisions of the Contract and to supply materials, equipment, tools and labor without delay for the performance of the work. The Contractor shall also submit in writing to the Owner a résumé of the superintendent's qualifications, years of experience and names of other projects on which he worked in a supervisory capacity. The Contractor shall not remove or replace the superintendent without two weeks prior notice thereof to the Engineer and Owner. The Contractor will supervise and direct the work. He has the authority to determine the means, methods, techniques, sequences and procedures of construction, except in those instances where Owner specifies in the Contract, a means, method, technique, sequence or procedure for construction of that item of work.
- B. Subcontractors will not be recognized as having a direct relationship with the Owner. All persons engaged in the work including employees of subcontractors and suppliers will be considered as employees of the Contractor and their work shall be subject to the provisions of the Contract. References in the Contract Documents to actions required of subcontractors, manufacturers, suppliers or any person other than the Contractor, the Owner or the Engineer shall be interpreted as requiring that the Contractor shall cause such subcontractor, manufacturer, supplier or person to perform the specified action.

#### 5.05 Responsibility of the Contractor

- A. It is the responsibility of the Contractor to do all work and furnish all labor, materials, equipment, tools, and machines necessary for the performance and completion of the project in accordance with Contract Documents within the specified time. Materials and construction details built by the Contractor but not a part of the permanent project, shall meet approval of the Engineer, but such approval shall not relieve the Contractor from responsibility for their safety and efficiency.
- B. The Owner shall not be liable or responsible for any accident, loss, or damage happening to work referred to in the Contract Documents prior to completion and acceptance thereof.

- C. The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of subcontractors, manufacturers, suppliers and their employees. All subcontractors, manufacturers and suppliers must have sufficient knowledge, skill and experience to perform properly the work awarded to them.
- D. The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of his employees. All workers must have sufficient knowledge, skill and experience to perform properly the work assigned to them.
- E. The Contractor, acting through his superintendent, shall give personal attention to and shall manage the work to the end that it shall be prosecuted faithfully. When the superintendent is not personally present at the job site, his previously designated representative shall be available and shall have the authority to act on the Contract.
- F. The Contractor alone shall at all times be responsible for the safety of his and his subcontractor's employees. The Contractor shall maintain the job site and perform the work in a manner which meets the Owner's and Contractor's responsibility under statutory and common law for the provision of a safe place to work.
- G. The Contractor shall at all times conduct his work so as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Engineer, Owner and proper governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks, private and public driveways and proper functioning of all gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.
- H. The Contractor shall adopt a written safety program complying with the requirements for employee and public safety set forth herein above. Four (4) copies of the Contractor's safety program shall be submitted to the Engineer and Owner. Adoption of and compliance with such program and submission of the copies thereof to the Engineer and Owner shall be a condition precedent to the Contractor's right to receive progress payments.
- I. The Contractor shall maintain books, records (including but not limited to financial records), and other evidence and documents pertinent to the performance of the work under this Contract in accordance with generally accepted principles and practices.
- J. The Contractor will provide proper facilities to the Owner for access, inspection, and copying at all times. The books, records documents, etc. to be maintained under this paragraph shall be maintained and made available during performance of the Contract and for three (3) years after completion of the work, or settlement of any claims arising thereon, whichever is later.

- K. The Owner's access to such records is not limited to the required retention periods. The Owner and its authorized representative shall have access to such records at any reasonable time for as long as the records are maintained.
- L. The Contractor shall perform the work in accordance with currently approved methods and practice in the Contractor's professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.
- M. The Contractor shall act as an independent contractor and is not an employee, subcontractor, agent, servant, partner nor joint venture of the Town. The Contractor has the right to use its best judgment and efforts to fulfill the terms and obligations of the Contract Documents. Contractor shall further agree and acknowledge the following:
- (1) Contractor will receive no compensation other than that agreed to by the parties as bid by the Contractor plus any compensation agreed to in subsequent change orders and the Contractor, its agents, employees and subcontractors are not subject to nor eligible for any benefits which may be offered by the Town to its employees, such as vacation pay, sick leave, insurance coverage or retirement plan participation. Any such benefits offered by the Contractor shall be the Contractor's sole responsibility.
  - (2) The services to be provided by the Contractor are an independent calling or occupation.
  - (3) The Contractor is expected to use its own skill, judgment and expertise to fulfill its obligations, and is not supervised, directed or controlled by the Town as to the means or methods it should employ except that the Contractor follow the Contract Documents.
  - (4) The Contractor is not required to perform tasks in particular order or sequence, except as provided in the Contract Documents.
  - (5) The Contractor needs no training from the Town as to how to fulfill its duties and responsibilities.
  - (6) The Contractor may determine its own daily schedule and those of its own employees or servants without prior approval of the Town.
  - (7) The Contractor is not required to devote any particular percentage of its time or resources to perform the services required hereunder.
  - (8) The Contractor shall furnish its own equipment and supplies.
  - (9) Although the Contractor may be provided the use of the Town's facilities, such use is provided merely to facilitate the Contractor's coordination with the Town's staff and communication with vendors, other contractors engaged on the project, and members of the community.
  - (10) To the extent the Contractor must procure or maintain any insurance, license, certification or trade membership, it must do so at its own cost.

(11) The Contractor shall not be prevented from performing other services for other parties. Contractor may engage in other business endeavors or projects of any kind as long as such activities do not conflict with the Contractor's relationship with the Town as defined hereunder.

- N. The Contractor shall read and review all plans, specifications and supporting documents attached to these specifications within the Appendix.

#### 5.06 Notifications Relative to Contractor's Activities

- A. The Contractor shall take special notice of Subsection 5.05. The Contractor shall obtain prior approval from the Owner for closing or partial closing of any street. The Contractor shall, without exception, notify the Fire Department, Police Department, ambulance services, U. S. Postal Service, garbage services, and Dare County Schools when closing any street, or portion thereof, in the Town of Southern Shores for any purpose.
- B. Said notice shall include the limits and approximate duration of the closure. The Contractor shall promptly notify said departments when the streets are again passable for emergency vehicles.
- C. The Contractor shall also cause the least inconvenience possible to businesses, property owners and residents. Each business and residence shall be given an approved, printed notice of a pending closure. Ample time shall be allowed for the movement of vehicles away from the project. In emergencies, Contractor shall notify businesses and residents directly and assist them in leaving the area as needed.
- D. The Contractor shall leave his night emergency telephone number or numbers with the Chief of Police so that contact may be made easily at all times in case of barricade trouble or other emergencies.
- E. Contractors shall request on-site utility locations in accordance with the laws governing utility locations prior to the commencement of work.
- F. When performing work in streets and easements, whether inside or outside Owner's legal boundaries, the Contractor shall notify all of the affected local agencies about the operations so as to properly coordinate and expedite the work in such a manner as to cause the least amount of conflict and interference between the operations and those of other agencies.
- G. Notifications shall include, but not be limited to, the time of commencement and completion of work, names of streets or locations of alleys to be closed, schedule of operations and routes of detours where possible.
- H. Any or all damages or claims resulting from improper or insufficient notification of the affected agencies shall be the responsibility of the Contractor.
- I. Subject to the provisions of Section 5.07, Owner shall relocate or cause to be relocated all privately or publicly owned utility conduits, lines, poles, mains, pipes

and such other facilities within the jurisdiction and control of Owner where such relocation is necessary in order to conform said utility and other facilities to the plans and ultimate requirements of the project.

#### 5.07 Utilities and Existing Improvements

- A. The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the work and for the purpose of maintaining and making repairs to their property.
- B. While performing the Work, the Contractor shall be held responsible for: any damage by Contractor or its subcontractor(s) or agent(s) to, maintenance for, and protection of existing utilities and structures.

#### 5.08 Cooperation Between Contractors

- A. The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this Contract.
- B. When separate contracts are let within the work area, each contractor involved will submit a realistic progress schedule for the Owner's approval. Each party shall have the right to review all schedules. After consultations with the contractors, the Owner will determine acceptable schedules.
- C. Each contractor involved shall assume all liability in connection with the Contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Contractor due to the presence and operations of other contractors working on or near the same project.
- D. The contractor shall arrange the work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors on or near the same project.
- E. When a dispute arises between two or more contractors engaged on work in the same or adjacent areas as to the respective rights of each, the Owner, or, if directed by the Owner, the Engineer will determine the matters at issue and define the respective rights of the various interests involved. The Owner's decision shall be final and binding on all parties concerned.
- F. If the contract gives notice of other work that may affect the work of this Contract, the coordination of the work shall be taken into account by the Contractor, and any resulting costs shall be considered incidental work.
- G. In an emergency, the contractor that is immediately accessible may make repairs to a facility or utility of another contractor.



#### 5.10 Protection of Property

- A. The Contractor shall protect all public and private property insofar as it may be endangered by operations and take every reasonable precaution to avoid damage to such property.
- B. The Contractor shall restore and bear the cost of any public or private improvement, facility or structure within the right-of-way or easement which is damaged or injured directly or indirectly by or on account of any act, omission, or neglect in the execution of the work. The Contractor shall restore any damaged public or private improvement to a condition as good or better than that existing before such damage or injury occurred by repairing, rebuilding, or otherwise effecting restoration thereof, or if this is not feasible, makes a suitable settlement with the Owner of the damaged property, all at no expense to the Owner.
- C. The Contractor shall give reasonable notice to occupants of buildings on property adjacent to the work to permit occupants to remove vehicles, boats, trailers, and other possessions, as well as salvage or relocate plants, trees, fences, sprinkler systems, or other improvements in the right-of-way, which are designated for removal or which may be destroyed or damaged by work operations.
- D. The Contractor shall protect all designated trees and planted areas within the right-of-way or easements. He shall also exercise care and conduct operations so as to minimize damage to new planted areas.

#### 5.11 Protection of Work

- A. Until acceptance of the project, the Contractor shall at all times protect from damage and preserve all materials, supplies, equipment of any description, and all work already performed, from the nature of the work, the action of the elements, and damage by any person or persons or from any other cause whatsoever.

#### 5.12 Use of Improvement During Construction

- A. Upon request and with approval of the Owner, or upon order of Owner, Contractor will be relieved of the duty of maintaining and protecting certain portions of work which are approved to be placed in service and which have been completed in accordance with the Contract Documents, including cleanup.
- B. Owner shall have the right to take possession of and use any completed or partially completed portions of the improvement. Such use shall not be considered as final acceptance of the improvement or portions thereof.
- C. In addition, such action by Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of work resulting from use by public traffic or from the action of the elements or from any other cause, except injury or damage resulting from Contractor's own operations or from his negligence. Contractor will not be required to again clean up such portions of the improvement prior to field acceptance, excepting for such items of work as result from his operations. However, nothing in this section shall be construed as relieving

Contractor from full responsibility for making good work or materials found to be defective.

#### 5.13 Verbal Agreements

- A. No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon Owner.

#### 5.14 Dust, Noise and Pollution Control

- A. The Contractor shall conduct the work in accordance with local laws and ordinances and all regulations of the NCDENR other agencies of the state, and with all laws and regulations of the federal government and in accordance with subsection 7.01. All practicable means shall be exercised to prevent, control and abate the pollution of waters and to maintain reasonable purity of the air. The Contractor shall abate dust nuisance by cleaning up, sweeping, sprinkling with water, or other means as necessary to accomplish the suppression of dust.
- B. The Contractor shall conduct the work in conformity to all applicable laws and regulations governing construction noise.

#### 5.15 Temporary Traffic Control

- A. The Contractor shall provide and be responsible at all times for such flag persons, signs and other devices not otherwise specified to be furnished by the Owner, in conformance with the language below:
  - 1. The Contractor shall maintain traffic flow during construction and shall provide, install, and maintain all traffic control devices in accordance with these project guidelines, the Project Special Provisions, North Carolina Department of Transportation Standard Specifications for Roads and Structures 2012, and the current edition of the Manual of Uniform Traffic Control Devices (MUTCD).
  - 2. The Contractor shall utilize complete and proper traffic controls and traffic control devices during all operations. All traffic control and traffic control devices required for any operation shall be functional and in place prior to the commencement of that operation. Signs for temporary operations shall be removed during periods of inactivity. The Contractor is required to leave the project in a manner that will be safe to the traveling public and which will not impede motorists. All traffic control devices shall be provided and maintained by the Contractor as in Section 1105 of the Standard Specifications.
  - 3. Traffic movements through lane closures on roads with two way traffic shall be controlled by flaggers stationed at each end of the work zone. In situations where sight distance is limited, the Contractor shall provide additional means of controlling traffic, including, but not limited to, two-

way radios, pilot vehicles, temporary traffic signals, or additional flaggers. Flaggers shall be competent personnel, adequately trained in flagging procedures, and furnished with proper safety devices and equipment, including, but not limited to, safety vests and stop/slow paddles.

4. All personnel when working in traffic areas or areas in close proximity to traffic shall wear an approved safety vest, or shirt or jacket which meets the color requirements of the Manual 21 Uniform Traffic Control Devices. (MUTCD).
  5. The Contractor shall comply with all applicable regulations including, but not limited to, Federal, State, and local laws, ordinances, and regulations governing safety, health, and sanitation, and shall provide all safeguards, safety devices, and protective equipment, and shall take any other needed actions, on his own responsibility that are reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the work covered by the contract. Failure to comply with any of the requirements for safety and traffic control of this contract shall result in suspension of work as provided in sub article 108-7(2) of the Standard Specifications.
- B. Upon failure to immediately provide the necessary flag persons, or to provide, erect, maintain, and remove barricades, lights, and standard signs when so ordered, Engineer or Owner shall suspend work until such person(s) are available and working on the project.

#### 5.16 Removal of Unacceptable or Unauthorized Work

- A. If the Engineer or Owner finds the work performed is not in conformance with the Contract, the Engineer or Owner may:
  - 1) Reject the work and have it replaced or otherwise corrected by the Contractor at no expense to the Owner, or;
  - 2) Accept the work as suitable for the intended purpose, document the basis of acceptance, and adjust the amount paid to the Contractor.
- B. The Owner's judgment concerning acceptability of work will be final. Unacceptable work found before final acceptance of the work shall be corrected or removed as directed by the Owner and replaced by work and materials conforming to the requirements of the Contract.
- C. Unauthorized work will not be paid for and may be ordered removed at the Contractor's expense.
  1. Unauthorized work is:
    - a) Work done beyond the Plans or established by the Engineer or Contract Documents;
    - b) Work done contrary to the Engineer's or Owner's instructions; or,
    - c) Work done without the Engineer's or Owner's written authorization.

- D. If, when ordered by the Engineer or Owner, the Contractor fails to correct or remove unacceptable work or to remove unauthorized work, the Engineer or Owner may have the correction or removal and replacement done by others. The cost shall be borne by the Contractor and may be deducted from payments due or to become due to the Contractor.

#### 5.17 Restoration and Cleanup

- A. Periodically, or as directed by Engineer or Owner, as the work progresses, and immediately after completion of the work, Contractor shall clean up and remove all refuse, debris, equipment and unused materials of any kind resulting from the work. Upon failure to do so within twenty-four hours after directed, the work may be done by Owner or third party and the cost thereof be deducted from any payment due Contractor.
- B. As a condition precedent to final acceptance of the project, all equipment and temporary structures, and all rubbish and waste shall be removed and the right-of-way and premises shall be generally cleaned up to conform substantially to conditions as they existed before the commencement of work, as approved.

#### 5.18 Final Inspection

- A. When all on-site construction work on the project is completed, the Contractor shall notify the Engineer and Owner in writing that the project is ready for final inspection. The Engineer and Owner will make an inspection within 15 calendar days of receiving notification. The Engineer or Owner will notify the Contractor, in writing, within ten calendar days thereafter. If all construction work required by the Contract is found complete and satisfactory, this inspection will constitute the final inspection.
- B. If any work is found incomplete or unsatisfactory, the Engineer will give written instructions, at the direction of the Owner, as to what shall be done to satisfactorily complete the work. After complying with such instructions, the Contractor shall follow the above procedures of notification, requesting a final inspection.
- C. The Engineer will issue a notice to the Contractor when all the following work is satisfactorily completed.
  - 1) All work required under the contract;
  - 2) All change order work;
  - 3) The final trimming and cleanup work; and,
  - 4) All required certifications, bills, forms, and other documents are received from the Contractor including:
    - Consent of Surety
    - Lien Waivers
    - Warrantee

#### 5.19 Final Acceptance

- A. After final inspection of all work is made, and the work is found acceptable, the Owner will make final acceptance of the work under the Contract.

- B. The Contractor will be notified, in writing, within ten calendar days after final acceptance of the work.

## 6. CONTROL OF MATERIALS

### 6.01 Quality of Materials

- A. Only new materials, parts, products and equipment which conform to specified requirements shall be used in the work, unless directed by the Engineer or Owner, the Proposal and Special Provisions to salvage and reuse existing materials. Materials and products which after approval have become unsuitable or unacceptable for use, regardless of cause, will be rejected by the Engineer or Owner and shall not be used.

### 6.02 Sampling and Testing

- A. Tests of materials will be made by Owner in accordance with methods described or designated in the applicable Specifications, and at any time during the production, fabrication, preparation and use of the materials.
- B. Owner reserves the right to require samples and to test products for compliance with pertinent requirements irrespective of prior certification of the products by the manufacturer thereof as set forth in Subsection 6.03.
- C. When tests of materials are necessary, as determined by the Engineer, such tests will be made by and at the expense of Owner unless otherwise specified. The Contractor shall afford such facilities as required for collecting and forwarding samples where practical and withhold from use the materials represented by the samples until tests have been made and materials found equal to requirements of the Specifications or to approved samples. In all cases the required samples shall be furnished without charge and in ample time to permit testing of materials prior to use. No claim will be allowed for any delay caused by awaiting test results. Safety measures and devices to protect those who take the samples shall be provided.
- D. In the absence of any reference Specification, it shall be understood that such materials shall meet the specifications and requirements of the American Society for Testing and Materials (ASTM), or the American Association of State Highway and Transportation Officials (AASHTO), as directed by the Engineer. When there is no pertinent coverage under ASTM or AASHTO, the material concerned shall meet specifications and requirements of applicable commercial standards of the Commodity Standards Division of the U.S. Department of Commerce. Lacking such coverage, materials shall meet requirements established by reputable industry for a high-quality product of the kind involved.
- E. All testing shall be performed by or handled through a testing laboratory as directed by the Engineer and Owner.
- F. In the event Owner requests tests and the materials fail, the Contractor shall bear all costs for all subsequent testing necessary to meet specified requirements.

### 6.03 Certification

- A. For commercial products inclusive of industry standardized products, in lieu of normal sampling and testing procedures by the Contractor and Owner, the Engineer may accept from Contractor two copies of the manufacturer's certification with respect to the product involved, under conditions set forth as follows:
  - 1. Certification shall state that the named product conforms to Owner's requirements and that representative samples thereof have been sampled and tested as specified.
  - 2. Certification shall either be accompanied with a certified copy of test results, or certify that such test results are on file with the manufacturer and will be furnished to Engineer upon request.
  - 3. Certification shall give the name and address of the manufacturer, the testing agency and the date of tests; and shall set forth the means of identification which will permit field determination of the product delivered to the project as being the product covered by the certification.
  - 4. Owner will not be responsible for any costs of certification or for any costs of the sampling and testing of products in connection therewith.

### 6.04 Inspection Requirements

- A. Access to Engineer, Owner or his representatives shall be allowed to all parts of the work and to plants of manufacturers at all times. The Contractor shall furnish them with every reasonable facility for ascertaining if the work meets requirements and intent of the Contract Documents. All samples required for testing purposes shall be furnished at no expense to Owner.

### 6.05 Inspection By Others

- A. Inspection of work by persons other than representatives of the Owner will not constitute inspection by Owner, except as set forth in Section 6.03.

### 6.06 Storage and Protection of Materials

- A. Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the right-of-way may be used for storage purposes, including Contractor's equipment, but any additional space required therefore shall be provided by Contractor at his expense. Private property shall not be used for storage purposes without written permission of the property owner or lessee. When requested, copies of such written permission shall be furnished to the Engineer and Owner.

## 6.07 Trade Names, Approved Equals or Substitutions

- A. In order to establish a basis of quality, certain processes, types of machinery or equipment or kinds of materials may be specified either by description of process or by designating a manufacturer by name and referring to his brand or product designation, or by specifying a kind of material. It is not the intent of these Specifications to exclude other processes, equipment or materials of equal value, utility or merit.
- B. Whenever a process is designated or a manufacturer's name, brand, or item designation is given or whenever a process or material covered by patent is designated or described it shall be understood that the words 'or approved equal' follow such name, designation or description, whether in fact they do so or not.
- C. If it is desirable to furnish items of equipment by manufacturers other than those specified as a substitute after the Contract is executed, approval shall be secured prior to placing a purchase order or furnishing same.
- D. If the Proposal includes a list of equipment, materials or articles for which Contractor must name the manufacturer at time of submission of the Bid, no substitutions therefore will be permitted after a Proposal has been accepted, without the express consent of Owner.
- E. The Contractor shall assume full responsibility for all expenses involved in making any required changes in the Contract Documents to accommodate a substitution approved by the Engineer and Owner for the convenience of Contractor, or to circumvent any unforeseen difficulty in obtaining a specified article.

## 7. LEGAL RELATIONS AND RESPONSIBILITIES

### 7.01 Laws and Regulations

#### A. General

- 1. The Contractor shall keep fully informed of all Federal and State laws, ordinances and regulations, and all orders and decrees or bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of work. All such laws, ordinances, regulations, orders and decrees shall be observed and complied with. The Contractor shall protect and indemnify Owner and his representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Contractor, his Subcontractors, suppliers of materials or services, or others engaged by the Contractor, or their employees.
- 2. Attention is directed to the General Statutes of the State of North Carolina for public contracts and public works contracts.

B. Protection of the Environment

1. The Contractor's attention is directed to GS, NCAC and all project permits for dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the work. Any unforeseen work relating to the prevention of environmental pollution, or the preservation of natural resources shall be considered the responsibility of the contractor.
2. The Contractor shall conduct operations in conformity to the applicable sections of NCAC, laws amendatory thereto, and all pertinent regulations of the NCDENR and other agencies of the state and the federal government, as well as ordinances or resolutions enacted or adopted by local authorities.
3. It is public policy that all practicable means be exercised to prevent, control, and abate the pollution of waters of the state, and to maintain reasonable purity of the air by the control or abatement of air pollution.
4. The Contractor shall exercise every reasonable precaution throughout the life of the Contract to safeguard the air resources of the state by controlling or abating air pollution.
5. Federal, state, and local agencies having a responsibility and/or jurisdiction relating to the environment include, but are not limited to, the following agencies:

U.S. Department of Agriculture  
U.S. Department of Health and Human Services  
U.S. Environmental Protection Agency  
U.S. Corps of Engineers  
U.S. Coast Guard  
U.S. Department of Labor  
North Carolina Department of Environmental Quality  
    Division of Energy, Minerals & Land Resources  
    Division of Water Resources  
    Division of Coastal Management  
    Division of Air Quality  
    Division of Marine Fisheries  
    Division of Waste Management  
North Carolina Department of Health and Human Services  
North Carolina Department of Transportation  
North Carolina Wildlife Resources Commission  
Dare County Health Department  
NOAA – National Marine Fisheries Service  
Local County Courts and Boards of Commissioners  
Local Town Councils and Commissions  
Local Planning Commissions

7.02 Subcontractors

- A. The Contractor agrees not to assign, transfer, convey or otherwise dispose of the Contract or the right, title or interest therein either in whole or in part, or the power to execute such contract, to any person, firm or corporation without the written



consent of the Owner. No portion of the contract shall be sublet, subcontracted or performed by other than the Contractor's own organization except with the written consent of the owner. Requests for permission to sublet or subcontract any portion of the Contract or to have any of the work performed by another organization shall be in writing and accompanied by a demonstration that the organization which will perform the work is experienced and equipped for such work.

- B. Written consent to assign, transfer, convey, sublet, subcontract or otherwise dispose of any portion of the Contract or to have portions of the work performed by other than the contractor's own organization shall not relieve the Contractor of any responsibility under the Contract or for the fulfillment of the Contract.
- C. The Contractor shall perform with the Contractor's own organization Contract work amounting to not less than 40 percent of the amount of the Contract as awarded, except that any items designated in the Contract as specialty items may be performed by subcontract. The cost of any such specialty items may be deducted from the amount of the Contract before computing the amount of work required to be performed by the Contractor's own organization. The term "own organization" refers only to workers employed and paid directly by the Contractor and equipment owned or rented by the Contractor.
- D. The Contractor shall make payment for subcontract work; performance of specialty items and other Contract work performed by others in the same units and on the same basis of measurement as apply under the Contract.
- E. In making payment to subcontractors and to others by whom work under the Contract is performed, the Contractor shall protect against the possibility of overpayment, and shall assume losses that result from overpayment. While the Engineer may estimate the quantities of work performed and of materials on hand for inclusion in progress payments, there is no guarantee of the correctness of such estimates. No incorrect estimate, regardless of by whom or when given, will be binding upon the Owner in final settlement.
- F. The Contractor shall direct and coordinate the operations of subcontractors and others performing the work and shall insure that the orders of the Engineer and or Owner are promptly carried out. Failure of the Contractor to control the work of subcontractors and other employees may result in the issuance of orders requiring the cancellation of the subcontracts and the removal of the subcontractors and other employees from the work site.

#### 7.03 No Waiver of Legal Rights

- A. Owner shall not be precluded or stopped by any measurement, estimate or certificate made either before or after completion and acceptance of work or payment therefore, from showing the true amount of character of work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that work or materials do not conform in fact to the Contract.
- B. Owner shall not be precluded or stopped, notwithstanding any such measurement, estimate or certificate, or payment in accordance therewith, from recovering from

the Contractor and his Sureties such damages as it may sustain by reason of his failure to comply with terms of the Contract, or from enforcing compliance with the Contract.

- C. Neither acceptance by Owner or by any representative or agent of the Owner of the whole or any part of the work, nor any extension of time, nor any possession taken by Owner, nor any payment for all or any part of the project, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

#### 7.04 Other Contracts

- A. Owner shall have the right to let other contracts to be coordinated with this Contract. The Contractor shall cooperate with and afford such other contractors reasonable opportunity for introduction and storage of materials and for execution of their work. Any matter of dispute shall be decided by the Owner, and his decision shall be binding.
- B. If any part of the work depends for its proper execution upon work of any such other Contractor, the Contractor shall inspect and promptly report to the Engineer and Owner any defects that affect subsequent work. Failure to do so shall constitute an acceptance of such other Contractor's work as fit and proper for the reception and attachment of his own work and equipment.

#### 7.05 Hold Harmless

- A. Contractor shall defend, indemnify and hold harmless Owner from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the performance of this Contract by Contractor except, for losses, claims, or actions resulting from the sole negligence of Owner.
- B. The Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Contractor, the Owner, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever.
- C. The Contractor shall assume defense of, indemnify and save harmless the Owner, its officers, and employees from all claims, liability, loss, damage and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any Subcontractor under the Contract or any way arising out of the Contract, irrespective of whether any act, omission or conduct of the Owner connected with the Contract is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Contractor or Subcontractor is merely a condition rather than a cause of a claim, liability, loss, damage or injury.

- D. The Contractor shall not be liable for nor be required to defend or indemnify, the Owner relative to claims for damage or damages resulting solely from acts or omissions of the Owner, its officers, agents, or employees.

#### 7.06 Insurance

- A. The Contractor shall provide and maintain general liability, auto liability, property, and workers' compensation insurance for life of this Contract.

- 1. General Liability Insurance

The Contractor shall maintain an ISO Commercial General Liability insurance policy (or an equivalent policy approved by Owner) with combined single limits of at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage and an aggregate limit of a least \$2,000,000. The policy shall include coverage for contractual liabilities.

- 2. Comprehensive Automobile Liability Insurance

The Contractor shall maintain an automobile liability insurance policy with combined single limits of a least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

- 3. Additional Insured Endorsement

The general and automobile insurance policies specified above shall include endorsements naming as an additional insured "the Town of Southern Shores, its agents, employees and officials all while acting within their official capacity as such."

- 4. Property Insurance

Depending on the nature of the construction contemplated under this contract, Owner may require Contractor to provide property insurance. Refer to Special Provisions section of this Contract.

- 5. Workers' Compensation Insurance

Contractor, its subcontractors, if any, and all employers working under this agreement are subject employers under the North Carolina Workers' Compensation Law which requires them to provide workers' compensation coverage for all their subject workers.

Contractor is responsible for maintaining workers' compensation insurance for his employees and assuring that his subcontractors, if any, also maintain workers' compensation insurance. Contractor shall defend, indemnify, and hold Owner harmless from any liability for any workers' compensation claims costs, fines, or costs whatsoever arising from Contractor's or his subcontractors' failure to comply.

- 6. Additional Policies and Special Coverage

B. Refer to the Special Provisions section of this Contract for additional coverage that may be required.

C. Certificates of Insurance

1. Certificates of insurance evidencing all policies required by this Contract shall be delivered to the Owner prior to the commencement of any work. All certificates shall include a 30-day notice of cancellation clause and required additional insured endorsements. The Owner has the right to reject any certificate for unacceptable coverage and/or companies.

#### 7.07 Royalties and Patents

A. The Contractor shall pay all royalties and license fees. The Contractor shall see the Owner free, indemnify and defend Owner, from all loss or damage that may result from the wrongful or unauthorized use of any patented article or process.

#### 7.08 Permits

A. The following Permits and Supporting Data apply to this project:

1. None for this project.

#### 7.09 Payment of Obligations

A. Contractor shall: (1) Make payment promptly as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided in this contract. (2) Pay all contributions or amounts to the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. (3) Not permit any lien or claim to be filed or prosecute against the state, county, school district, municipality, municipal corporation, or subdivision thereof on account of any labor or material furnished. (4) Pay to the Department of Revenue all sums withheld from employees.

B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contract or subcontractor by any person in connection with this contract as such claim becomes due, the proper officer or employees representing Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of this contract.

C. The payment of a claim in the manner authorized above shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

#### 7.10 Dispute Settlement

A. In the event the Contractor has filed a written protest in accordance with Section 4.09 Disputed Work, the Owner shall review the written protest and related documents and perform such investigations as the Owner deems appropriate and

will try to transmit its decision in writing to the Contractor within 30 days from the date of receipt of the written protest.

- B. In the event the Owner elects to do so, the Owner may establish a "Claims Review Board" either to assist in reviewing appeals hereunder or to consider Contractor appeals directly.
- C. Subject to the provisions of Section 7.10.E. below, during the pendency of a written protest any related work performed by the Contractor shall be done at the Contractor's risk unless authorized by the Owner.
- D. [reserved]
- E. Where a written protest relates to only a portion of the work to be performed under this Contractor, the Contractor shall not delay that portion of the work to which the written protest does not relate, unless the Contractor shall have written permission or written direction from the Owner to do so.
- F. [reserved]
- G. The parties hereby stipulate and consent that jurisdiction and venue shall be exclusively for all matters arising under this agreement in the courts of the State of North Carolina.
- H. All terms and provisions of this agreement shall be construed according to North Carolina law, it being agreed by the parties that the agreement was entered into in the State of North Carolina.

#### 7.11 Protection of Other Governmental Authorities

- A. Whenever work under the Contract affects or may affect public property owned by or under the jurisdiction of any governmental authority, agency or district, including governmental subdivision other than the Owner, the Contractor shall indemnify and save harmless such governmental authority, its officers, agents and employees, from loss damage or claim of loss or damage to such property or the use thereof, arising from work under the Contract. Any bond or insurance and any special guarantee deposit required by such governmental authority, shall be supplied before beginning any portion of the work which affects or may affect the property of such governmental authority or the use thereof.

#### 7.12 Public Safety and Convenience

- A. The Contractor shall conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, flag persons shall be provided when directed, and means of free access to all fire hydrants, service stations, warehouses, stores, houses, garages and other property shall be maintained.
- B. When access to a business or businesses may be confusing for the traveling public due to operations of the contractor, the Contractor shall provide adequate signage to clarify alternate or existing access to the business(s). Private residential

driveways shall be closed only with approval of the Owner or specific permission of the property owner.

- C. Normal operation of public transit vehicles shall not be interfered with unless otherwise authorized. The contractor shall not obstruct or interfere with travel over any public street or sidewalk without approval. Open trenches and excavations shall be provided with adequate barricades of an approved type which can be seen from a reasonable distance. At night, all open work and obstructions shall be marked by lights. The Contractor shall install and maintain all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges and facilities. The Contractor shall observe all safety instructions received from Engineer, Owner or governmental authorities, but following of such instructions shall not relieve Contractor from his responsibility or liability for accidents to workmen or damage or injury to person or property.
- D. Emergency traffic such as police, fire and disaster units shall be provided reasonable access to the work area at all times.
- E. The Contractor shall be liable for any damages which may result from failure to provide such reasonable access or failure to notify the appropriate authority.

#### 7.13 Personnel Safety

- A. The Contractor shall be responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to the applicable federal, state, county, and local laws, ordinances and codes.
- B. Where any of these are in conflict, the more stringent requirement shall be followed. The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site.

#### 7.14 Detours

- A. All detours caused by work operations, or for convenience of the Contractor, shall be constructed and maintained at no expense to Owner. Plans for such detours shall be submitted to Engineer and Owner for approval.
- B. The Contractor may request to construct and maintain temporary detours to provide adequate passage of public traffic and protection of the work at all times. If a detour established by the Contractor causes or may cause difficulty or confusion regarding access to a business, the Contractor shall provide signs to direct the traveling public to the business.
- C. Detours within the limits of the project such as side street crossings or utilization of one or more lanes of the construction area for maintenance of traffic shall be the responsibility of the Contractor.

- D. If, in the judgment of the Engineer, one-way piloted traffic is necessary, it shall be provided for as set forth in Section 02105 - Temporary Traffic Control. The Engineer may recommend if flagging and piloting can be dispensed with after working hours. In the event that flagging and piloting are required after working hours as a result of carelessness or negligence on the part of the Contractor to properly condition work at the end of the day, such piloting and flagging shall be provided by Contractor at no expense to Owner.
- E. Upon failure to immediately provide, maintain, or remove suitable detours when ordered to do so by Engineer or Owner, Owner may without notice to Contractor or his Surety provide, maintain, or remove the detour and deduct costs thereof from any payments due or coming due to Contractor.

#### 7.15 Labor

- A. Upon notification in writing from the Owner, the Contractor shall remove immediately from the job for its duration any laborer, workman, mechanic, foreman, superintendent, or other person employed who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform his work properly and acceptably.
- B. Attention is directed to the North Carolina General Statutes relative to unlawful employment practices or discrimination by employers against any employee or applicant for employment because of race, religion, color, sex, or national origin. It is an unlawful employment practice for an employer, because of the race, religion, color, sex, or national origin of any individual, to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.
- C. In the event the Contract is funded in whole or in part by federal funds, the Contractor shall comply with all provisions of Executive Order No. 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- D. In the event of the Contractor's noncompliance with the nondiscrimination clauses of a Contract so funded, or with any such rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for future government contracts or federally assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246, and such other sanction may be imposed and remedies invoked as provided in Executive Order No. 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- E. If it is necessary to perform construction work on Saturdays, Sundays or legal holidays, or outside the eight (8) hour regular working day, Owner shall be notified of intent to do so one day prior to commencing such overtime work. In any event, all work shall be subject to Town Council approval. Prior to the start of such work, the Contractor shall arrange with the Engineer and/or Owner for continuous or

periodic inspection of the work, surveys, and tests of materials, when necessary. Contractor shall be responsible for any additional costs incurred for inspection of work, surveys, and tests of materials necessitated by such overtime work.

#### 7.16 Use of Explosives

- A. The use of explosives is prohibited.

#### 7.17 Rights-of-Way, Easements and Premises

- A. Construction activities shall be confined within property lines, limits of easements and limits of construction permits as shown or specified in the Contract Documents, unless arrangements are made with owner(s) of adjacent private property. Prior to the use of any private property outside these specified boundaries, written permission of the property owner(s) shall be filed with the Owner; upon terminating such usage, a release from all damages, signed by the property owner(s), shall be filed with the Owner. Contractor shall save and hold harmless Owner from any loss or claim for damages resulting from unauthorized use of private property.
- B. The specified work areas shall not be unreasonably encumbered with materials and equipment, and permits for special occupancy and use of the specified work areas shall be obtained from the proper agencies and all associated costs borne by the Contractor. The Engineer's directions regarding signs, advertisements, fires, and smoking will be followed.

#### 7.18 Waste Sites

- A. Shall be permitted through the NCDENR, NCDOT or other local, state or federal agency having jurisdiction of the type and nature of the waste.
- B. Either type of waste site shall be operated in such a manner as to meet all safety and health requirements of state and local agencies. Sites, operations, or the result of such operations, which create a nuisance problem, or which result in damage to public or private properties will not be permitted.
- C. Permits for dumping on sites designated in the Contract Documents or by the Engineer will be provided by Owner. The Contractor shall obtain any necessary permits for other sites at no expense to Owner. In selecting and obtaining fill sites for excess materials, the Contractor shall be aware of restrictions and regulations related to fill of wetlands, floodways, floodplains, drainage ways, erosion control, etc., and shall obtain all necessary approvals and permits related to the fill. Copies of issued permits will be furnished to Engineer prior to commencing filling operations. Materials shall not be deposited on an unimproved dedicated street without permission of the Engineer.
- D. Where waste sites are designated in the Contract Documents, the operations shall be performed as directed; and upon completion, the Contractor shall uniformly clean and shape the area as directed.



- E. Where there is additional waste excavation in excess of that needed for the project or for predesignated sites, this material shall be disposed by securing and operating a waste site in conformance with the general requirements hereinbefore described. Contractor may accept any reimbursement that can be secured from the sale of such material.

## 8. PROSECUTION AND PROGRESS OF WORK

### 8.01 Contractor's Construction Schedule

- A. Before starting work, the Contractor shall submit a proposed construction schedule to the Engineer and Owner. If it is desirable to carry on operations in more than one location simultaneously, a schedule shall be submitted for each location two weeks in advance of beginning such operations. In the event that the Contractor's proposed construction schedule does not meet the necessary construction program schedule as determined by Owner, the Contractor shall resubmit a schedule that conforms as approved.
- B. The schedule shall show the proposed order of work and indicate the time required for completion of the major items of work. This working schedule shall take into account the passage or handling of traffic with the least practicable interference therewith and the orderly, timely and efficient prosecution of work. It will also be used as an indication of the sequence of the major construction operations and as a check on the progress of work, but does not become a part of the Contract.
- C. If requested by the Engineer or Owner, the Contractor shall provide weekly progress schedules of expected project activities. The progress schedules shall indicate the Contractor's plan of prosecution of the work in sufficient detail to enable the Contractor, the Town, and the Engineer to plan, coordinate, appraise, document, and control their respective Contract responsibilities. The schedule of work, and the work forces and equipment supplied by the Contractor, shall be adjusted periodically as necessary to allow for the completion of the Contract within the Contract Time.

### 8.02 Preconstruction Conference

- A. A pre-construction conference with the Owner, Engineer, and Contractor will be provided. A Contractor's attendance at the said preconstruction conference is not mandatory, but strongly encouraged.

### 8.03 Notice To Proceed

- A. A written "Notice to Proceed" will be given after the Contract has been executed and the Performance Bond and Payment Bond, and all required insurance certificates have been filed with and approved by the Owner. No work shall commence under the Contract until such written notice has been given.
- B. Notice to Proceed for the project may be delayed by Owner until required utility relocation, construction, or reconstruction has been completed or has progressed to a satisfactory degree of conformance which will allow initial contract work to commence.

- C. Work shall commence after the date of the Notice to Proceed, or by such other date or time period specified in the Notice to Proceed. The actual date of commencement of work, or the last allowable date for commencement as specified in the Notice to Proceed, whichever is earlier, shall establish the date for commencement of the Contract time. The Contractor shall notify the Owner seven (7) days in advance of the actual time and place work will be started.

#### 8.04 Contract Time

- A. Except as otherwise agreed by the Town and Contractor in writing, the Contract Time shall be that period that begins upon the execution of the Contract and ends on December 15, 2024.
- B. Time shall be considered the essence of the Contract.
- C. If, in the judgment of the Owner, insufficient forces are being employed, or inadequate equipment and methods are used, or if progress is for any reason unduly delayed, he may instruct the Contractor in writing to increase his force or equipment, or adopt improved methods to expedite the work, and the Contractor shall heed and follow such instructions, but conformity to the Owner's instructions shall not relieve the Contractor of any of his responsibilities under the Contract.
- D. If the Contractor at any time falls behind its proposed schedule of work, the Owner may request and the Contractor shall supply a new schedule of work along with a statement regarding the increased forces or equipment or new construction methods to be employed on the work in order to complete the work within the Contract Time. Failure to supply a schedule of work and sufficient forces and equipment to complete the work within the Contract Time may be declared a breach of contract by the Owner.
- E. The Contractor shall complete the work called for under the Contract within the Contract Time or adjusted Contract Time.

#### 8.05 Suspensions Of Work

- A. Suspension by Owner
  - 1. The Contractor shall immediately suspend work on the project wholly or in part as directed by the Owner for good and sufficient reason. In the event of such suspension, Owner shall, except in emergency, and except as hereinafter provided, give Contractor three days' notice and work shall be resumed within five days after notice has been given by Owner to Contractor to do so. Owner shall allow Contractor an extension of time for completion corresponding to the total period of temporary suspension, and shall reimburse him for necessary rental of unused equipment, services of watchpersons and other unavoidable expenses by reason of the suspension without fault of Contractor.
  - 2. Contractor shall not be entitled to damages, intangible or overhead costs or anticipated profits from such temporary suspension.

B. Suspension by Engineer or Owner

1. The Contractor shall immediately suspend work on the project wholly or in part as directed by the Owner or, with the Owner's written authority, the Engineer, pursuant to Subsections 5.01 and 5.02 due to: (1) failure to correct unsafe conditions for working personnel, the general public or Owner's employees, (2) failure to carry out provisions of the Contract Documents, or (3) failure to carry out orders or directions, for such periods as the Engineer or Owner may deem necessary due to conditions considered unsuitable for the performance of the work or for any reason deemed to be in the public interest.
2. The Contractor shall immediately suspend work on the project wholly or in part as directed by the Owner or, with the Owner's written authority, the Engineer, for such periods as the Engineer may deem necessary, pursuant to Subsection 5.19 for failure to immediately correct defective and unacceptable work.

C. Suspension by Contractor

1. Suspending operations because of seasonal conditions or other unsuitable conditions pursuant to Subsection 8.06 shall require the concurrence of the Owner.

D. Responsibility of Contractor

1. Voluntary or involuntary suspension or slowdown, with or without the approval of the Owner or Engineer, and suspension of work ordered by the Owner or Engineer will not be grounds for claims or damages, idle equipment or labor, or extra compensation. No allowance or compensation will be made on account of such suspensions of work except as provided hereinbefore and as provided in Subsection 8.06.
2. At the commencement of, and during any suspensions of work, the Contractor shall be responsible for the care of work performed and take every precaution to prevent any damage or deterioration of the work. The Contractor shall be responsible for work, including temporary protection devices to warn, safeguard, protect, guide and inform traffic during suspension, the same as though its performance had been continuous and without interferences.
3. The Contractor shall be responsible and bear all costs for providing suitable provisions for traffic control and for maintenance and protection of the work during suspension for cause. If the Contractor fails to provide for temporary traffic control and to maintain the work, the Engineer or Owner may immediately proceed to maintain the work. The cost of such maintenance shall be deducted from payments due or to become due to the Contractor.

E. Resumption of Work

1. In all cases of suspension, work will be resumed only upon written order of the Engineer or Owner.

8.06 Delays and Extensions

- A. Contract completion time may be subject to adjustment during the progress of the work at the written request of the Contractor, for causes beyond the control of Contractor and which the Owner, with the advice of the Engineer, determines actually affected the time necessary for completion of work under the Contract.
- B. The Owner or Engineer will not consider adjustment of Contract Time based on shortage or inadequacy of labor and equipment, negligence or fault of Contractor and other deficiencies or lacks which are within the province of Contractor's control or responsibility. Causes which will be given consideration in justifying adjustment of Contract time will include, but are not limited to, the following:
  1. Errors, changes, or omissions in the Contract Documents.
  2. Failure of Owner, its representatives and its other contractors to act promptly in carrying out obligations and duties.
  3. Failure of Owner to submit the Contract Documents, or a part thereof, to the Contractor for execution within the specified time contained in Subsection 3.01 of the Proposal Form.
  4. Performance of extra work under Subsection 4.10.
  5. Court orders enjoining the prosecution of the project, strikes, acts of God which shall include action of the elements not reasonably foreseeable by the Contractor, or act of Owner not authorized by the Contract or permitted by law.
- C. A Contract time extension will be considered only if the Contractor has given written notice to Owner and Engineer of the cause of delay within ten days after the beginning thereof and notice to Owner or Engineer of the termination thereof within five days after such termination, and make claim for such extension prior to the Contract completion date. The decision by the Owner, with advice from the Engineer, of the reasonable term of any extension or denial thereof shall be final.
- D. An adjustment of Contract time, as herein provided, shall be Contractor's sole remedy for any delay in completion of the project arising from causes beyond the control of Contractor, and in no event shall Contractor be entitled to collect or recover any damages, loss or expense incurred by reason of such delay.

8.07 Liquidated Damages

- A. **The Contractor agrees to pay \$500 per calendar day for damages for delay sustained by the Town by reason of the Contractor's failure to timely perform its obligations under the Contract.** Such damages include, but are not limited to, the cost of prolonged administration, supervision and inspection and resolution of traffic and public relations issues surrounding the delayed completion. In submitting a Bid, Contractor the amount of liquidated damages as stated above is a reasonably accurate forecast of the probable damages for delay that would be sustained by Town in the event of a delay in completion. Such liquidated damages

shall not be the exclusive remedy of Town, but shall be in addition to any other remedies Town may have for breach of the Contract and shall be in addition to any actual provable damages, other than for delay, sustained by Town by reason of a breach of the Contract by Contractor.

- B. When the Contractor believes that all work on the project has been completed, the Contractor will set up a walk-through inspection with the Engineer and Owner, unless the Owner elects not to participate in such inspection. A "punch list" of all unfinished or unacceptable items will be made. The Contractor will finish all punch list work before the end of time allowed for the project. If work has not been completed by the end of the time allowed for the project, liquidated damages shall be charged for such delayed completion as provide above and shall be in addition to any other remedies the Town may have for breach of the Contract.

#### 8.08 Contractor's Representative

- A. Before starting work an authorized representative shall be designated who shall have complete authority to represent and to act for Contractor, in his absence from the work site, in all directions given him by the Owner or Engineer. Contractor, or his authorized representative, shall supervise the work, and shall be present on site continually during its progress, including such times as only Subcontractors may be actively working on the project. If called for in the Contract Documents, an office shall be maintained on or adjacent to the project site. The Contractor shall keep a complete copy of the Plans, Permits and Specifications on or near the site at all times. If Contractor and his authorized representative are not present on any part of the work where it may be necessary to give instructions, directions may be given by Engineer or Owner to the superintendent or foreman who may have charge of that particular part of the project, and such order shall be received and followed. Such directions shall not be deemed to change the status of Contractor or Subcontractor, not to make Owner an employer, nor to give Owner direct responsibility for the methods and manner of the work. Such directions of major importance will be confirmed in writing. Any direction will be so confirmed in each case on written request from the Contractor.

#### 8.09 Conflicts, Errors, Omissions, and Additional Drawings

- A. All plans, contract documents, and typical sections shall be checked and compared prior to construction and Engineer notified of any discrepancies or omissions in order to permit correction by Engineer. Coordination of Plans and Specifications is intended. Labor and materials required for the work shall be furnished if indicated on one and not the other as fully as if mentioned or indicated on both; and should any work or materials be reasonably required or intended for carrying the project to completion which are inadvertently omitted on the Plans and Specifications, the same shall be furnished as fully as if particularly delineated or described. The intent of the Plans and Specifications is to show and describe a complete project within the limits stated. Dimensions shown on Plans shall be followed rather than scale measurements. Whenever it appears that the Contract plans are not sufficiently detailed or explicit, the Engineer may furnish additional detailed drawings or written instructions.

- B. In case of conflict between requirements set forth in the Contract Documents the provisions for order of precedence in Subsection 4.04.A shall apply.

#### 8.10 Owner's Right To Do Work

- A. Neglecting to prosecute the project properly, or failing or refusing to perform any of the terms or conditions of the Contract, will permit Owner to supply or correct any deficiency or defect without prejudice to any other remedy. Such action by Owner shall be taken only after three days' notice by Engineer or Owner to Contractor and his Surety, unless in the judgment of the Owner, an emergency or danger to the work or to the public exists, in which event action of Owner, as set forth above, may be taken without any notice whatsoever. The cost of such action by owner shall be deducted from the payment then or thereafter due Contractor. The Contractor shall pay Owner any costs in excess of such payment due.

#### 8.11 Termination of Contract

- A. All terms and conditions of the Contract are considered material, and failure by Contractor to comply with any of said terms or conditions shall, at Owner's option, be deemed a breach of contract. Upon such failure, Owner shall have the right, whether an alternative right is provided or not, to declare the Contract terminated. Issuance by Owner of an order stating that the Contract is terminated, and service of a copy of said order upon Contractor and his Surety, shall be deemed a complete termination of the Contract. Upon the Contract being so terminated, Owner may retain all sums due under the Contract and both the Contractor and his Sureties shall be liable under his bond for all losses, expenses and damages caused to Owner by reason of his failure to complete the Contract, and Surety shall be required, at Owner's option, to complete the project. Notwithstanding such termination, Contractor and his Sureties shall remain liable under the terms of the Contract for work performed prior to such termination. The Engineer will recommend to the Town the payment due Contractor for work performed prior to the date of Contract termination.
- B. Town and Contractor may agree to terminate the contract: (1) If work under the contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of a third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute; and (2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works.
- C. Reimbursement for mobilization expenses, when not included in the contract as a separate pay item, including moving equipment to and from the work, will be considered where the volume of work completed is too small to compensate the Contractor for these expenses under the Contract prices. When an item for mobilization appears in the Contract as a separate pay item, the amount to be paid the Contractor will be the mobilization amount earned in accordance with Section 02100.
- D. Acceptable materials obtained by the Contractor and not incorporated in the work may be purchased from the Contractor at actual cost as shown by receipted bills.

## 8.12 Default By Contractor

- A. The Owner may, without prejudice to any other right or remedy and after giving the Contractor and Contractor's surety seven days' written notice, terminate the employment of the Contractor if the Contractor should:
- 1) Be adjudged bankrupt or experience dissolution, termination of existence, insolvency, business failure or discontinuance as a going business, appointment of a receiver of any property of, for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against contractor.
  - 2) Make a general assignment for the benefit of the Contractor's creditors;
  - 3) Have a receiver appointed on account of contractor's insolvency;
  - 4) Fail to supply enough properly skilled workers, proper materials, or adequate equipment for the efficient prosecution of the work;
  - 5) Fail to make prompt payment to subcontractors or suppliers;
  - 6) Disregard laws, ordinances, or the instructions of the Engineer, Owner, or Town; or
  - 7) Fail to comply with any term, obligation, or covenant or condition contained in this contract or the associated permits, within seven (7) days after receipt of written notice from Owner demanding such compliance.
- B. The Owner will take possession of the premises and all materials, tools, and appliances as well as all other materials on which the Contractor has received partial payment. The Owner may finish the work by any method the Owner deems expedient.
- C. The Contractor shall not be entitled to receive any further payment until the work is completed. On completion of the work, determination shall be made by the Town, with the advice of the Engineer, of the total amount the Contractor would have been entitled to receive for the work had the Contractor completed the work. The difference between the total amount and the amounts previously paid to the Contractor shall be called the unpaid balance and if the unpaid balance exceeds the expense incurred by the Owner in completing the work, including expense for additional managerial and administrative services, the excess will be paid to the Contractor, with the consent of the surety. If the expense incurred by the Owner exceeds the unpaid balance, the amount of the excess shall be paid to Owner by the Contractor or the surety.
- D. Upon completion of the project by others, Contractor will be entitled to the return of all material which has not been used in the work or which has not been paid for, and for all plant, tools, equipment and other property, provided, however, that no claim will be allowed because of usual and ordinary depreciation, loss, wear and tear. None of the foregoing provisions, or the provisions in Subsection 8.11, shall be construed to require Owner to complete the work, nor to waive or in any way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Owner on account of failure of Contractor to complete the project within the time prescribed.

### 8.13 Completion and Acceptance

- A. After completion of the work specified in the Contract, and completion of the final inspection, the Engineer will recommend to the Owner that the work be accepted and payment be made.
- B. No payment made under the Contract except the final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall constitute an acceptance of unauthorized or defective work or improper material.
- C. A certificate of completion or letter of acceptance of the project, submitted by the Engineer or other officer of the Owner, shall constitute final acceptance of the work on the date of the certificate or letter. Such certificate or letter of acceptance shall not constitute an acceptance of any unauthorized work.
- D. The acceptance of the work shall not prevent the Owner from making claim against the Contractor for defective work.

### 8.14 Final Warranty

- A. The work is guaranteed by the Contractor for a specified period from the date of final acceptance by the owner. If no warranty period is specified, the work shall be guaranteed for one year from the date of final acceptance by the owner. The Contractor's performance bond shall remain in effect during the warranty period. If, within the warranty period, repairs or changes are required in connection with the work, the Contractor shall promptly, without expense to the Owner:
  - 1) Place in satisfactory condition all guaranteed work;
  - 2) Correct all damage to the building site, equipment or contents which is the result of the use of materials, equipment or workmanship with are inferior, defective, or not in accordance with the terms of the contract; and,
  - 3) Correct any work, material, equipment, or contents of building, structure or site disturbed in fulfilling the guarantee.
- B. Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for one year, beginning on the date of the acceptance of the repairs, replacements or changes.
- C. If the Contractor fails within ten days to proceed to comply with the terms of this warranty, the owner may have the defects corrected. The Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the Contractor and the Contractor or Contractor's surety shall pay the cost.

## 9. MEASUREMENT AND PAYMENT

### 9.01 Measurement of Quantities

- A. Payments shall be based on measurements of completed work in accordance with the United States Standard Measures. Units of measurement for payment shall be



shown or specified. In calculating quantities, all lengths and areas will be based on horizontal and vertical measurement, unless otherwise specified.

- B. Basis is defined as the particular standard unit of measurement which will be applied to a particular item of work as shown on the Proposal for a specific Contract. Each basis of measurement herein set forth is generally applicable and will be in effect; however, in case of conflict, the order of precedence will conform to Subsection 4.04.A.

#### 9.02 Scope of Payment

- A. Quantities listed in the proposal do not govern final payment. These quantities are estimates only for purposes of obtaining competitive bids. Payments to the Contractor will be made only for actual quantities of Contract items performed in accordance with terms of the Contract and for items of work actually performed as Extra Work or under supplemental agreement in accordance with the terms of the Contract.
- B. The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, labor, tools, equipment and incidentals, excluding those specified in Subsection 4.09, necessary for performing all work under the Contract, also for all loss, damage or liability arising from the nature of the work, or from the action of the elements, subject to provisions of Subsection 6.06 or from any unforeseen difficulties which may be encountered during prosecution of the work, until final acceptance by Owner.

#### 9.03 Payment Schedule

- A. The Contractor may submit a request for partial payment on a monthly basis (every 30 days), or other interval as approved by the Owner. The amount of partial payments will be based on the work accomplished and accepted as the last day of the approved pay period. All requests for payment shall be made on the form furnished to the Contractor by the Town Of Southern Shores. The form shall be completely and legibly filled out with all appropriate information supplied and shall be signed by an authorized representative of the Contractor. Minority Business (MB) and Women's Business (WB) participation shall be listed in the appropriate spaces on all requests for payment. If there is no participation the word "None" or the figure "0" shall be entered. One hundred percent (100%) payment shall be made after successful completion of the work as verified by the final inspection. Final payment will be released upon the receipt of a written statement from the Contractor to the Town indicating that all subcontractors have been paid in full.

#### 9.04 Verification of Work

- A. Reserved

#### 9.05 Compensation for Alteration of Contract

- A. Unless changes and alterations in Plans or Quantities, Contract Documents, or details of construction materially change the character of work to be performed or

unit costs thereof, Contractor shall accept as payment in full, so far as Contract items are concerned, payment at the same unit prices as are provided under the Contract for accepted quantities of work done. If the work involved is measured on a lump sum basis, the adjustment of the lump sum for the increases or decreases shall be as specifically set forth in the applicable section of these Standard Specifications.

- B. If, however, the character of work or unit costs thereof are materially changed, pursuant to Subsection 4.07, compensation for such work will be made on such basis as may have been agreed to in advance of the performance of work, or in case no such basis has been previously agreed upon, then an allowance may be made, either for or against the Contractor, in such amount as the Town, with the advice of the Engineer, may determine to be fair and equitable.

#### 9.06 Eliminated Items

- A. Owner shall have the right to eliminate, omit or cancel (herein collectively termed elimination) portions of the Contract Documents relating to construction of any items or part of any item by payment to the Contractor of a fair and equitable amount covering all items of actual costs incurred directly in connection with eliminated work and prior to the date of elimination of work by order of the Town. Where practicable, work completed before elimination shall be paid for at unit prices, otherwise Contractor will be allowed a profit percentage on materials used and construction work actually performed at rates as provided in Section 4.11 for force account work, but no allowance will be made for anticipated profits. Acceptable materials ordered by Contractor, delivered to the work site, or properly stored at sites approved by the Engineer Or Owner prior to date of elimination of work by order of the Town may be purchased from Contractor by Owner at actual cost, and thereupon shall become the property of Owner.

#### 9.07 Payment for Extra Work

- A. Extra work shall be paid at prices agreed upon between Contractor and Owner, but in no event exceeding unit prices established in the Contract.
- B. When such order pertains to work of a class or classes for which no unit prices are established, then the agreed adjustment shall be based either on unit prices decided on fair and equitable grounds or shall be a lump sum similarly decided, as Owner may determine, or such work may be done as Extra Work at force account. In no case shall any claim for Extra Work be made unless ordered as such.

#### 9.08 Progress Payments and Retainage

- A. Payments for all work under the Contract will be made at the price or prices bid therefore, and those prices shall include full compensation for all incidental work.
- B. Progress estimate of work performed in any calendar month will be made by the Engineer before the last week of that month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and

may be approximate only, may relate to the cost schedule mentioned herein, and shall be based upon the whole amount of money that will become due according to terms of the Contract when project has been completed. The Engineer may in special circumstances include in progress estimates up to eighty-five percent of the cost of Contractor of materials delivered to the site, properly stored, protected from damage and insured, provided that after any such payment such materials must be used in the particular project; Engineer may require receipted invoices prior to payment.

- C. If the Contract price is determined, in whole or in part, on a lump sum basis, Contractor shall prepare an estimated cost schedule relating thereto and have Engineer approve same before commencing work; progress estimates based on said estimated cost schedule shall be the basis for progress payments.
- D. Progress payment will be made by Owner on a monthly basis no later than the 20th day of the subsequent month of work performed, except that, additional days may be required when a payment is accompanied by one or more of the following: an extension of completion time, change order or extra bill. Payment may be made via use of checks or warrants at the option of Owner for the amount of the approved estimate. Notwithstanding any other payment provision herein, the Owner may retain up to ten percent (10%) retainage on payments made pursuant to this Contract, but only after the Owner has made a determination that such retainage made be withheld pursuant to GS 143-134.1.
- F. Monies retained will be released to Contractor following official acceptance of the project by the Town Council of the Town of Southern Shores. The Town Engineer may recommend early release of partial retainage, if any, if all work is completed.
- G. If Contractor fails to complete the project within the time limit fixed in the Contract or any extension thereof, no estimate may be accepted for progress or other payments allowed thereafter until the project is completed.
- H. The making of progress payments shall under no circumstances be construed as an acceptance of any of the work or materials under the Contract.

#### 9.09 Deferment of Payments

- A. No partial or final payment will be made until all orders made by Engineer to Contractor in accordance with the Specifications are compiled with, or until all claims or liens filed or prosecuted against Owner, its officer or employees contrary to provisions of the Contract are satisfied.
- B. In the event a complaint or charge of unlawful employment practices is filed against the Contractor by anyone, including the Owner, no further payments will be made on the Contract until such time as the issue is resolved.

#### 9.10 Final Estimate and Payment

- A. The Engineer, Project Inspector, and Owner shall be notified when work is considered complete and Owner, with the advice of the Engineer, shall, within fifteen (15) days after receiving notice, either accept the work or notify Contractor

of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and recommend acceptance of the work as of a certain date. Upon approval and acceptance by Owner, Contractor will be paid a total payment equal to the amount due under the Contract including all retainage, if any.

- B. As a further prerequisite to final payment, Contractor shall execute and deliver to Owner, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claim against Owner growing out of, or connected with, the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by insurance protecting Owner, its officers, agents and employees as well as Contractor.
- C. If Owner declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainage held by Owner, if any, shall be paid to Surety and not to Contractor in accordance with terms of the Contract.

#### 9.12 Acceptance of Final Payment

- A. Acceptance by Contractor of final payment shall release Owner and Engineer as agent of Owner from all claims and all liability to Contractor for all things done or furnished in connection with the work, and every act of Owner and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release Contractor or his Sureties from obligations under the Contract and the performance, payment, and other bonds and warranties, as herein provided.