

NEW STONE REVETMENT AT THE FORMER CON-AGRA PROPERTY

CITY OF HURON

417 MAIN STREET

HURON, OHIO 44839

PREPARED BY:

KS Project #21245-1



KS Associates, Inc.

Civil Engineers + Surveyors

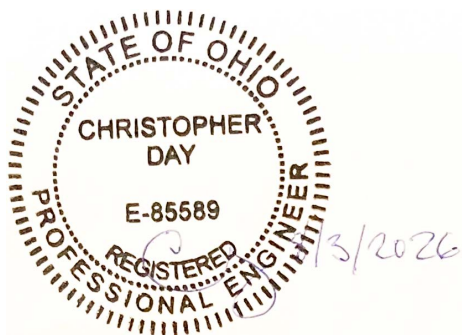
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Elyria, Ohio 44035

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AUGUST 2026

Legal Advertisement

Sealed bids will be received by the City of Huron ("Owner"), at the office of the City Manager, Huron City Hall, 417 Main Street, Huron, OH 44839 on the 2nd day of September 2026 until 3:00 pm current local time for the:

"New Stone Revetment at the Former Con-Agra Property"

and will be publicly opened and read immediately thereafter. Each bid must contain the full names of the party or parties making the same, with an affidavit as to interested parties, and in the case of a corporation not chartered in Ohio, with a proper certificate that such corporation is authorized to do business in Ohio, and shall be accompanied by a Bid Guaranty Bond for the full amount (100%) of the Bid, in favor of the "Owner" or a certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Ohio Revised Code, in the amount of 10% of the Bid, payable to the "Owner".

It is agreed that the bid guaranty shall be for the benefit of the "Owner" pursuant to Section 153.54 of the Ohio Revised Code if the undersigned fails to execute the Contract in conformity with the Form of Contract incorporated in the contract documents and furnish Bond and insurance certificates within ten (10) days after the notification of the award of the Contract to the undersigned.

1. Copies of the Contract Documents are on file at KS Associates Inc. and may be obtained (1) by email to dayc@ksassociates.com or, (2) in person at 260 Burns Road, Suite 100, Elyria, Ohio 44035.

Please note that in order to be considered as a "responsive bidder" for this project, you must purchase a set of plans and bid documents, and follow all instructions provided. Bids from contractors who are not on the Plan Holders List will be disqualified. A pre-bid meeting will be held on the 19th day of August 2026 at 2:00 pm at the project site. Please enter through the Huron River Boat Ramp and meet near the west passenger vehicle parking area.

The "Owner" reserves the right to reject any and all bids, to waive any informalities in the bids received, and to accept any bid which it deems most favorable.

The "Owner" is an Equal Opportunity Employer and does not discriminate against the handicapped.

Mr. Stuart Hamilton
City Manager/Service Director
City of Huron

Publish Dates: Sandusky Register
Week of July 27, 2026
Week of August 3, 2026

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DRAWINGS AND BID ITEMS REFERENCE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION,
CONSTRUCTION AND MATERIAL SPECIFICATIONS, JANUARY 1, 2023.

ATTACHMENTS

EJCDC NO. C-520-2013 AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)

EJCDC NO. C-700 STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION
CONTRACT

U.S. ARMY CORPS OF ENGINEERS PERMIT LRB-2011-00033

DIVISION 0 – BIDDING AND CONTRACT REQUIREMENTS

SECTION 00 21 13 – INSTRUCTIONS TO BIDDERS

1. DEFINED ITEMS

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (EJCDC No. C-700) have the meanings assigned to them in the General Conditions. The term “Bidder” means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder. The term “Successful Bidder” means the lowest, qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award. The term “Bidding Documents” includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids). The term “Owner” refers to City of Huron.

2. CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS

Copies of the complete Contract Drawings and Specifications are available at KS Associates, 260 Burns Road, Suite 100, Elyria, Ohio 44035.

3. BID DEPOSITORY

Hand carried bids must be deposited, prior to the time set for submittal of bids, at KS Associates, Inc., 260 Burns Road, Suite 100, Elyria, OH 44035.

4. PLACE OF BID SUBMITTAL AND OPENING

Bids shall be submitted to KS Associates, Inc., 260 Burns Road, Suite 100, Elyria, OH 44035, no later than 3:00 p.m. on Wednesday, September 2, 2026. Bids may also be emailed to dayc@ksassociates.com, with a CC to cencerm@ksassociates.com.

Bids shall be privately opened.

5. ARITHMETIC DISCREPANCIES

(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:

- (1) Obviously misplaced decimal points will be corrected;
- (2) In case of discrepancy between unit price and extended price, the unit price will govern.

6. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder’s observations with the Contract Documents, and (e) notify the Engineer of all conflicts, errors or discrepancies in the Contract Documents.

7. PRE-BID SITE MEETING

A Pre-Bid meeting at the former Con-Agra Property, Huron, Ohio 44839 is scheduled for Wednesday, August 19, 2026 at 2:00 pm. Attendance at the pre-bid meeting is recommended by not required to submit a bid. The Engineer is Christopher M. Day, P.E., of KS Associates, Inc., 260 Burns Road, Suite 100, Elyria, OH 44035, phone: 440-365-4730 ext. 354; 216-906-5321 mobile; email: dayc@ksassociates.com.

8. COMPLETION TIME

Base Bid: All contract work shall be completed by Tuesday, March 16, 2027.

9. GENERAL CONDITIONS

EJCDC Document No. C-700, "Standard General Conditions of the Construction Contract", shall be a part of this contract.

10. CONSTRUCTION CONTRACT

EJCDC Document C-520-2013, "Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)", shall be completed and signed by the Owner and Contractor who is awarded the contract and shall become a part of this contract.

11. SOLICITATION DEFINITIONS – SEALED BIDDING

"Offer" means "bid" in sealed bidding.

"Solicitation" means an invitation for bids in sealed bidding.

12. ACKNOWLEDGMENT OF AMENDMENTS TO INVITATIONS TO BID

Bidders shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment, (b) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, or (c) by letter or telegram. Owner must receive the acknowledgement by the time and at the place specified for receipt of bids.

13. SUBMISSION OF BIDS

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing the time specified for receipt, the project name, and the name and address of the bidder.

(b) Bids submitted by e-mail are authorized by this solicitation. Bids may be modified or withdrawn by written or e-mailed notice, provided that such notice is received by the time specified for receipt of bids.

14. EXPLANATION TO PROSPECTIVE BIDDERS

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing a minimum of 72 hours prior to the bid opening to allow a reply to reach all prospective bidders before submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to

the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

15. PREPARATION OF BIDS – CONSTRUCTION

- (a) Bids must be submitted on the forms furnished by the Owner or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.
- (b) The bid form may require bidders to submit bid prices for one or more items on various bases, including:
 - (1) Lump sum bidding;
 - (2) Alternate prices;
 - (3) Units of construction; or
 - (4) Any combination of subparagraphs (1) through (3) above.
- (e) The following will disqualify the bid:
 - (1) The use of a bid form other than the bid form appearing in this document.
 - (2) A bid based on quantities that differ from the bid form in this document.
 - (4) Failure to enter a price for all bid items.

Please be advised that this is a prevailing wage contract.

16. CONTRACT AWARD – SEALED BIDDING – CONSTRUCTION

- (a) Owner and the Engineer will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to Owner.
- (b) Owner may reject any or all bids and waive informalities or minor irregularities in bids received.
- (c) Bids shall be valid for a period of 90 days after bid opening.

END OF SECTION

SECTION 00 41 00 – BID FORM

NEW STONE REVETMENT AT THE FORMER CON-AGRA PROPERTY							
Base Bid: Furnish all labor, materials, tools, and equipment required for the Base Bid of removing an existing concrete deck and installing new Armor Stone, Toe Stone, and Filter Stone over new Quarry Run Stone to protect and stabilize the existing sheet pile cell bulkhead along the northern and eastern sides of the former Con Agra site in Huron, Ohio.							
Item No.	Specification Section	Description	Estimated Quantity	Unit	Unit Price Labor	Unit Price Materials	Extended Price
Base Bid							
1	01 71 13	Mobilization	1	LS			
2	31 00 00	Site Clearing	1	LS			
3	02 06 00	Demolition of Existing Concrete Loading Dock	1	LS			
4	02 06 00	Demolition of Existing Concrete Walkway, Cap, Debris and Appurtenances	1	LS			
5	35 31 19	1-3 Ton Toe Stone	1000	TONS			
6	35 31 19	ODOT Type B Armor Stone	17000	TONS			
7	35 31 19	ODOT Type C Filter Stone	10000	TONS			
8	35 31 19	Quarry Run Core Stone	36000	TONS			
9	31 05 22	Geotextile Filter Fabric	1700	SY			
10	02 93 00	Site Restoration	1	LS			
	Base Bid Total Cost:						

SIGNATURE

PRINTED NAME

DATE

CONTRACTOR NAME

CONTRACTOR BUSINESS ADDRESS

Acknowledgement of _____ Addenda received.

END OF SECTION

SECTION 00 62 76 – APPLICATION FOR PAYMENT

PART 1 – GENERAL

1.1 REQUIREMENTS INCLUDED:

- 1.1.1 Procedures for preparation and submittal of Applications for Payment.

1.2 RELATED SECTIONS:

- 1.2.1 Section 01 32 19 – Submittals.

1.3 SUBMITTALS:

- 1.3.1 Contractor shall submit a schedule of values for the project for approval by the Engineer.

1.4 FORMAT:

- 1.4.1 Contractor shall use standard format.
- 1.4.2 For each item, provide a column for listing: Item Number; Description of Work; Scheduled Value; Previous Applications; Work in Place and Stored Materials under this Application; Authorized Change Orders; Total Completed to Date of Application; Percentage of Completion; Balance to Finish; and Retainage.

1.5 PREPARATION OF APPLICATIONS:

- 1.5.1 Type required information.
- 1.5.2 Execute certification by signature of authorized officer.
- 1.5.3 Use data on accepted Schedule of Values. Provide dollar value in each column for each line item for portion of work performed and for stored products.
- 1.5.4 List each authorized Change Order as an extension on continuation sheet, listing Change Order number and dollar amount as for an original item of Work.

1.6 SUBMITTAL PROCEDURES:

- 1.6.1 Submit each Application for Payment at times stipulated in Agreement.
- 1.6.2 Submit under transmittal letter specified in Section 01 32 19 – Submittals.

END OF SECTION

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01 20 00 – MEASUREMENT AND PAYMENT

PART 1 – GENERAL

1.1 SUMMARY

- 1.1.1 Payment for the various Items of the Bid, as further specified herein, shall include all compensation to be received by the Contractor for providing all tools, equipment, supplies, materials, manufactured articles, labor, operations, temporary facilities, utilities and incidentals appurtenant to the project as items necessary to complete the various items of the Work in accordance with the requirements of the Contract Documents. Work also includes all costs of permits and all costs of compliance with the regulations of public agencies having jurisdiction, including Safety and Health Requirements of the State of Ohio and the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA). No separate payment will be made for any item that is not specifically set forth in the Bid, and all costs therefore shall be included in the prices named in the Bid for the various Items of work.
- 1.1.2 Payment for each respective item shall include such general costs for the providing of drawings, submittals, samples, tools, and appliances necessary to complete the work as specified and shown on the Contract Drawings.

1.2 SUBMITTALS

- 1.2.1 Format and Contents: Contractor shall submit Application for Payment in accordance with the Contract Documents and as specified herein.

1.3 QUALITY ASSURANCE – NOT USED

1.4 DELIVERY, STORAGE, AND HANDLING

- 1.4.1 The Contractor shall make his own arrangements for delivery and handling of equipment and materials as it may require for the prosecution of the Work. The location of all temporary roadways and similar facilities shall be subject to the approval of the Owner.
- 1.4.2 The Contractor shall make all necessary arrangements and provisions for the storage of materials and equipment to be used on this Contract. All excavated materials, construction equipment, and materials and equipment to be incorporated into the Work shall be placed so as not to injure any part of the Work or existing facilities. To always allow free access to all parts of the Work and to all public utility installations in the vicinity of the Work. The site shall be organized in a neat and orderly manner to minimize any interference or inconvenience to the Owner. Materials and equipment may only be stored within the limits of the site area as shown on the Drawings.

1.5 PAYMENT ITEMS

1.5.1 BID ITEM NO. 1 MOBILIZATION / DEMOBILIZATION

1.5.1.1 SCOPE OF WORK

- 1.5.1.1.1 This item shall consist of preparatory work and operation for the assembling and setting up for the project, moving in of personnel and equipment, incidentals to the project sites,

and other facilities, as required by the Contract Documents and the Contract, as well as by local or state law and regulation, including all permits required for the project.

- 1.5.1.1.2 This item includes the delivery of temporary facilities all necessary support installations including field office, utility installations, traffic control measures, dumpsters, porta johns, dust control, security, construction video, photographic documentation, etc., refer to Section 01 71 13 for a complete listing of items included in this Bid Item.
- 1.5.1.1.3 This item shall include all costs associated with preparation of pre-construction submittals including schedules, schedules of values, work plans, safety plans, and technical submittals.
- 1.5.1.1.4 Pre- and post-construction inspections, as specified.
- 1.5.1.1.5 This item also includes all costs associated with demobilization of personnel, materials, and equipment from the project sites.
- 1.5.1.2 MEASUREMENT & PAYMENT
- 1.5.1.2.1 Partial payment of this item will be paid based on the approved Schedule of Values for work done as follows:

Item	Payment Description	% Of this Bid Item Total Amount
1	Initial Mobilization and Setup	70%
2	Upon approval of Substantial Completion	10%
3	Upon Final Completion after final acceptance of the work by the Owner and delivery of all required record drawings and maintenance as specified for Project Closeout.	20%

1.5.2 BID ITEM NO. 2 SITE CLEARING

- 1.5.2.1 SCOPE OF WORK
- 1.5.2.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the removal of waste lumber, driftwood, other wood debris, trash, rock, obstructions, trees, shrubs, and vegetation in the project area.
- 1.5.2.2 MEASUREMENT & PAYMENT
- 1.5.2.2.1 Payment for all work performed under this Section will be by lump sum bid price for Site Clearing.

1.5.3 BID ITEM NO. 3 DEMOLITION OF EXISTING CONCRETE LOADING DOCK

- 1.5.3.1 SCOPE OF WORK
- 1.5.3.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with the existing concrete loading dock removal in accordance with the Contract Drawings, technical specifications, and

regulatory requirements.

All concrete removed from the work shall be disposed of at the Contractor's expense.

1.5.3.2 MEASUREMENT & PAYMENT

1.5.3.2.1 Payment for all work performed under this Section will be by lump sum bid price for Demolition of Existing Concrete Loading Dock.

1.5.4 BID ITEM NO. 4 DEMOLITION OF EXISTING CONCRETE WALKWAY, CAP, DEBRIS & APPURTENANCES

1.5.4.1 SCOPE OF WORK

1.5.4.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with the existing concrete walkway, cap, debris, & appurtenances removal in accordance with the Contract Drawings, technical specifications, and regulatory requirements.

All concrete removed from the work shall be disposed of at the Contractor's expense.

1.5.4.2 MEASUREMENT & PAYMENT

1.5.4.2.1 Payment for all work performed under this Section will be by lump sum bid price for Demolition of Existing Concrete Walkway, Cap, Debris, & Appurtenances.

1.5.5 BID ITEM NO. 5 1-3 TON TOE STONE

1.5.5.1 SCOPE OF WORK

1.5.5.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with placement of new 1-3 ton toe stone in accordance with the Contract Drawings, technical specifications, and regulatory requirements.

1.5.5.2 MEASUREMENT & PAYMENT

1.5.5.2.1 Payment will be made at the applicable contract unit prices. Price(s) and payment(s) shall include all costs of furnishing, hauling, and placing the toe stone.

1.5.5.2.2 Material will be measured for payment by the ton (2000 pounds) for toe stone acceptably placed in the work as determined by certified truck weight tickets.

1.5.5.2.3 Material placed beyond the tolerance limits specified for each type of material will not be paid for except where authorized by the Engineer. Reduction for materials placed beyond tolerance limits will be made on the basis of 3,000 pounds per cubic yard for all material. Any material wasted or used by the Contractor for other purposes and any material not placed in the work in accordance with the requirements of the specifications will not be measured or paid for.

1.5.6 BID ITEM NO. 6 ODOT TYPE B ARMOR STONE

1.5.6.1 SCOPE OF WORK

1.5.6.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with placement of new ODOT type "B" armor stone in accordance with the Contract Drawings, technical specifications, and regulatory requirements.

1.5.6.2 MEASUREMENT & PAYMENT

1.5.6.2.1 Payment will be made at the applicable contract unit prices. Price(s) and payment(s) shall include all costs of furnishing, hauling, and placing the armor stone.

1.5.6.2.2 Material will be measured for payment by the ton (2000 pounds) for armor stone acceptably placed in the work as determined by certified truck weight tickets.

1.5.6.2.3 Material placed beyond the tolerance limits specified for each type of material will not be paid for except where authorized by the Engineer. Reduction for materials placed beyond tolerance limits will be made on the basis of 3,000 pounds per cubic yard for all material. Any material wasted or used by the Contractor for other purposes and any material not placed in the work in accordance with the requirements of the specifications will not be measured or paid for.

1.5.7 BID ITEM NO. 7 ODOT TYPE C FILTER STONE

1.5.7.1 SCOPE OF WORK

1.5.7.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with placement of new ODOT type "C" filter stone in accordance with the Contract Drawings, technical specifications, and regulatory requirements.

1.5.7.2 MEASUREMENT & PAYMENT

1.5.7.2.1 Payment will be made at the applicable contract unit prices. Price(s) and payment(s) shall include all costs of furnishing, hauling, placing, and maintaining the filter layer until the armor layer is installed and accepted.

1.5.7.2.2 Material will be measured for payment by the ton (2000 pounds) for filter stone acceptably placed in the work as determined by certified truck weight tickets.

1.5.7.2.3 Material placed beyond the tolerance limits specified for each type of material will not be paid for except where authorized by the Engineer. Any material wasted or used by the Contractor for other purposes and any material not placed in the work in accordance with the requirements of the specifications will not be measured or paid for.

1.5.8 BID ITEM NO. 8 QUARRY RUN CORE STONE

1.5.8.1 SCOPE OF WORK

1.5.8.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with placement of new quarry run core stone in accordance with the Contract Drawings, technical specifications, and regulatory requirements.

1.5.8.2 MEASUREMENT & PAYMENT

1.5.8.2.1 Payment will be made at the applicable contract unit prices. Price(s) and payment(s) shall include all costs of furnishing, hauling, and placing the quarry run core stone.

1.5.8.2.2 Material will be measured for payment by the ton (2000 pounds) for quarry run core stone acceptably placed in the work as determined by certified truck weight tickets.

1.5.8.2.3 Material placed beyond the tolerance limits specified for each type of material will not be paid for except where authorized by the Engineer. Any material wasted or used by the Contractor for other purposes and any material not placed in the work in accordance with the requirements of the specifications will not be measured or paid for.

1.5.9 BID ITEM NO. 9 GEOTEXTILE FILTER FABRIC

1.5.9.1 SCOPE OF WORK

1.5.9.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with the installation of geotextile fabric in accordance with the Contract Drawings, technical specifications, and regulatory requirements.

1.5.9.2 MEASUREMENT & PAYMENT

1.5.9.2.1 Payment will be made at the applicable contract unit prices. Price(s) and payment(s) shall include all costs of installing geotextile fabric.

1.5.9.2.2 Material will be measured for payment by the square yard (9 square feet) for geotextile acceptably placed in the work.

1.5.9.2.3 Material placed beyond the tolerance limits or required overlaps specified will not be paid for except where authorized by the Engineer. Any material wasted or used by the Contractor for other purposes and any material not placed in the work in accordance with the requirements of the specifications will not be measured or paid for.

1.5.9.2.4 The Contractor shall take photographs of the installed geotextile fabric prior to covering it with other material and include photographs in the applications for payment with Geotextile Filter Fabric.

1.5.9.2.5 The Contractor shall provide purchase receipts for the geotextile fabric that has been installed in the applications for payment with Geotextile Filter Fabric.

1.5.9.2.6 Geotextile Filter Fabric will not be paid for unless applications for payment with that item include the installation photographs and receipts noted above.

1.5.10 BID ITEM NO. 10 SITE RESTORATION

1.5.10.1 SCOPE OF WORK

1.5.10.1.1 This item shall include full compensation for furnishing all labor, equipment, and materials necessary for the proper execution of work associated with Site Restoration seeding and mulching where shown on the Contract Drawings, including fine grading, stapling of seed netting (if used), and miscellaneous related work.

The Contractor shall be responsible for repairing all areas impacted by construction including vegetated areas, any asphalt pavement, or structures.

1.5.10.2 MEASUREMENT & PAYMENT

1.5.10.2.1 Payment for all work performed under this Section will be by lump sum bid price for Site Restoration.

1.5.10.2.2 Upon acceptable seeding, fertilizing and mulching phases of work as approved by the Engineer, fifty percent payment shall be made to the Contractor based on the division of contract price submitted.

1.5.10.2.3 Upon established grass as approved by the Engineer, the remaining fifty percent payment based on the division of contract price shall be made to the Contractor.

END OF SECTION

SECTION 01 30 00 - ADMINISTRATIVE PROVISIONS

PART 1 – GENERAL

1.1 REQUIREMENTS INCLUDED:

- 1.1.1 Title of Work and Type of Contract
- 1.1.2 Contractor Use of Premises
- 1.1.3 Coordination
- 1.1.4 Field Engineering
- 1.1.5 Reference Standards

1.2 WORK COVERED BY CONTRACT DOCUMENTS:

- 1.2.1 **Base Bid:** Furnish all labor, materials, tools, and equipment required for the Base Bid of removing an existing concrete deck and installing new Armor Stone, Toe Stone, and Filter Stone over new Quarry Run Stone to protect and stabilize the existing sheet pile cell bulkhead along the northern and eastern sides of the former Con Agra site in Huron, Ohio

1.3 CONTRACT METHOD:

- 1.3.1 Construct the work under lump sum and unit prices.
- 1.3.2 Owner will enter into separate contracts for work with the Contractor. Contract form will be the EJCDC Document C-520, "Agreement Between Owner and Contractor for Construction Contracts (Stipulated Price)".

1.4 CONTRACTOR USE OF PREMISES:

- 1.4.1 Contractor shall make arrangements with Owner for transportation of all construction materials and equipment to the site. All work and operations shall be coordinated with the Owner.
- 1.4.2 At the end of work by the Contractor, the Contractor shall be responsible for all damages caused by construction of the project and shall be responsible for restoring any damaged areas to their original condition (before construction started). To facilitate determination of damages, contractor shall photograph work area with 35 mm camera, digital camera or video camera prior to starting work and provide Owner with one set of prints or video.

1.5 APPLICATION FOR PAYMENT:

- 1.5.1 Submit each application under procedures of Section 01 32 19 on EJCDC No. C-700 "Application for Payment".

1.6 COORDINATION:

- 1.6.1 Coordinate work of the various Sections of Specifications to assure efficient and orderly sequences of installation of construction elements, with provisions for accommodating items installed later.

- 1.6.2 Site access shall be provided at locations listed on the contract drawings.
- 1.6.3 Contractor shall coordinate construction access, sequencing, and operations with Owner and additional contractors performing construction operations on site under separate contracts.

1.7 FIELD ENGINEERING:

- 1.7.1 Contractor field engineering services: establish grades, lines, and levels, by use of recognized engineering survey practices.
- 1.7.2 Locate and protect control and reference points and establish new points as required.

1.8 REFERENCE STANDARDS:

- 1.8.1 For products specified by association or trade standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
- 1.8.1 The date of the standard is that which is in effect as of the Bid date.
- 1.8.3 Obtain copies of standards when required by Contract Documents. Maintain copy at jobsite during progress of the specific work.

END OF SECTION

SECTION 01 30 10 - CERTIFIED PAYROLL FILING

PART 1 – GENERAL

1.1 REQUIREMENTS INCLUDED

- 1.1.1 The General Terms and Conditions require the CONTRACTOR and every lower-tier Subcontractor to submit certified payrolls and labor compliance documentation.
- 1.1.2 The CONTRACTOR shall submit payroll reports for the CONTRACTOR and all applicable Subcontractors with each CONTRACTOR PAYMENT REQUEST, which reports shall be certified by the CONTRACTOR that the payroll is correct and complete, and the wage rates shown are not less than those required by the Sections 4115.03 to 4115.21, ORC, or the Davis-Bacon Act, as applicable. The CONTRACTOR is responsible for submitting all payroll reports of the CONTRACTOR'S SUBCONTRACTORS.
 - 1.1.2.1 Each payroll report shall indicate the period covered and shall include a list containing the name, address and social security number of each employee of the Contractor and the Contractor's Subcontractors paid for the Work.
 - 1.1.2.2 Each payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, fringe benefits and all deductions from wages and net pay.
- 1.1.3 Each payroll report shall also list each fringe benefit and state if it is paid as cash to the employee or to a named plan.
- 1.1.4 The Contractor and all Subcontractors shall also submit apprenticeship agreements for all apprentices utilized on the Project.

1.2 SUBMITTALS

- 1.2.1. The CONTRACTOR shall submit certified payroll reports monthly.

1.3 QUALITY ASSURANCE—NOT USED

1.4 DELIVERY, STORAGE AND HANDLING—NOT USED

1.5 PROJECT SITE CONDITIONS

- 1.5.1 Questions regarding specific certified payroll issues please contact the OWNER'S Prevailing Wage Officer.

PART 2 – PRODUCTS — NOT USED

PART 3 – EXECUTION — NOT USED

END OF SECTION

SECTION 01 31 19 – PRECONSTRUCTION CONFERENCES

PART 1 – GENERAL

1.1 REQUIREMENTS INCLUDED:

- 1.1.1 Contractor participation in preconstruction conferences.

1.2 RELATED SECTIONS:

- 1.2.1 Section 01 30 00 – Administrative Provisions.

1.3 PRECONSTRUCTION CONFERENCE:

- 1.3.1 Owner will schedule conference within 10 days after Notice of Award.
- 1.3.2 Attendance: Owners or owners' representative, Engineer, Contractor and Subcontractors.
- 1.3.3 Agenda:
 - 1.3.3.1 Distribution of Contract Documents
 - 1.3.3.2 Submittal of list of Subcontractors, and construction progress schedule
 - 1.3.3.3 Designation of responsible personnel
 - 1.3.3.4 Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal requests, and change orders.
 - 1.3.3.5 Scheduling.

END OF SECTION

SECTION 01 32 19 – SUBMITTALS

PART 1 – GENERAL

1.1 REQUIREMENTS INCLUDED:

- 1.1.1 Procedures

1.2 RELATED SECTIONS:

- 1.2.1 Section 00 62 76 – Application for Payment
- 1.2.2 Section 01 30 00 – Administrative Provisions

1.3 PROCEDURES:

- 1.3.1 Deliver submittals to the Engineer at:

Christopher M. Day, P.E., and Mark Cencer, P.E.
KS Associates, Inc.
260 Burns Road, Suite 100,
Elyria, OH 44035
Phone: 440-365-4730 ext. 354
Mobile: 216-906-5321
Fax: 440-365-4790
Emails: dayc@ksassociates.com; cencerm@ksassociates.com.
- 1.3.2 Transmit each item under Engineer-accepted form. Identify Project, Contractor, subcontractor, major supplier; identify pertinent Drawing sheet and detail number, and Specification Section number, as appropriate. Identify deviations from Contract Documents. Provide space for Contractor and Engineer review stamps.
- 1.3.3 After Engineer review of submittal, revise and resubmit as required, identifying changes made since previous submittal.
- 1.3.4 Distribute copies of reviewed submittals to concerned persons. Instruct recipients to promptly report any inability to comply with provisions.

END OF SECTION

SECTION 01 52 00 – CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

PART 1 – GENERAL

1.1 REQUIREMENTS INCLUDED:

- 1.1.1 Sanitary Facilities
- 1.1.2 Electric Services
- 1.1.3 Water Service
- 1.1.4 Barriers
- 1.1.5 Security
- 1.1.6 Cleaning During Construction
- 1.1.7 Removals
- 1.1.8 Storage Areas
- 1.1.9 Construction Working Hours and Environmental Concerns.

1.2 RELATED SECTIONS:

- 1.2.1 Section 01 30 00 – Administrative Provisions
- 1.2.2 Section 02 93 00 – Site Restoration

1.3 SANITARY FACILITIES:

- 1.3.1 The Contractor shall be responsible for providing sanitary facilities for his workers. The Contractor shall not use the restrooms in the buildings at the project location unless permission has been granted in writing by the owner.

1.4 ELECTRIC SERVICE:

- 1.4.1 Electric service is not available at the waterfront work area. The Contractor shall not use electricity from the buildings at the project location unless permission has been granted in writing by the Owner.

1.5 WATER SERVICE:

- 1.5.1 Water service is not available at the waterfront work area. The Contractor is not allowed to use water from the buildings at the project location.

1.6 BARRIERS:

- 1.6.1 Provide temporary construction barriers as required to prevent unauthorized entry to construction areas and to protect existing facilities and adjacent properties from damage from construction operations.
- 1.6.2 Outside working hours:
 - 1.6.2.1 All temporary gaps in the fence behind the main buildings shall be closed using temporary barriers until the fencing has been restored to its preconstruction condition; and,

1.6.2.2 The existing gate, if used, shall be closed and locked.

1.7 SECURITY:

- 1.7.1. Provide security program and facilities to protect work, and existing facilities from unauthorized entry, vandalism, and theft. Coordinate security with the Owner's security program. Securing the construction area, materials and equipment shall be the responsibility of the contractor.
- 1.7.2. Allow access to any personnel from the Ohio Department of Natural Resources, the U.S. Army Corps of Engineers, or other permitting agencies having jurisdiction who visit the site to inspect the permitted project.
- 1.7.3. Firearms: The Contractor, subcontractors and their respective personnel shall be prohibited from bringing firearms to the project site unless allowed in writing by the Owner and the Engineer.
- 1.7.4 Take all necessary precautions to avoid damage to the existing sheet pile bulkhead.

1.8 CLEANING DURING CONSTRUCTION:

- 1.8.1 Control accumulation of waste materials and rubbish; periodically dispose of off-site.

1.9 REMOVAL:

- 1.9.1 Remove temporary materials, equipment, services, and construction prior to the Substantial Completion Inspection.
- 1.9.2 Clean and repair damage caused by installation or use of temporary facilities per Section 02 93 00 – Site Restoration.

1.10 STORAGE AND STAGING AREAS AND ACCESS:

- 1.10.1 Recommended staging and storage areas appear on the Contract Drawings.
- 1.10.2 The Contractor may temporarily remove existing sections of fencing to facilitate access if it requests and receives written permission from the Owner. Prior to Final Completion, the Contractor shall restore all fencing to its preconstruction condition unless the Owner allows otherwise in writing.

1.11 PROTECTION OF UTILITIES:

- 1.11.1 Provide 72-hour notice to existing utility owners prior to beginning construction.
- 1.11.2 Verify location and existence of underground utilities and structures by contacting utility owners. Go to "Call Before You Dig" to receive state-specific information. Access this information by dialing 811 or going to <https://oups.org/>.
- 1.11.3 Contact utility companies and authorities to make arrangements for handling and disposal of utilities encountered during construction.

- 1.11.4 Protect underground utilities and structures that are to remain. If damage occurs, immediately notify the affected utility owner within the hour and the Engineer and Owner within 24 hours.

1.12 PROTECTION OF SITE FEATURES TO REMAIN:

- 1.12.1 Protect site features to remain from damage by construction equipment and vehicular traffic.

1.11 CONSTRUCTION WORKING HOURS AND ENVIRONMENTAL CONCERNS:

- 1.11.1 Construction working hours shall be between 8:00 am and 5:00 pm, Monday through Friday unless otherwise allowed by the Owner.

1.12 ADJACENT PROPERTIES:

- 1.12.1 The Contractor shall take all practical measures to avoid damages to adjacent properties.
- 1.12.2 If damages to adjacent properties occur as a result of the Contractor's operations, the Contractor shall immediately notify the Engineer and Owner.

END OF SECTION

SECTION 01 60 00 – SPECIAL CONTRACT REQUIREMENTS

PART 1 – GENERAL

1.1 REQUIREMENTS INCLUDED:

- 1.1.1 Physical Data
- 1.1.2 Layout of Work
- 1.1.3 Tests and Inspections
- 1.1.4 Contractor's Liability Insurance
- 1.1.5 Owner Indemnification
- 1.1.6 Related Sections
 - 1.1.6.1 Section 02 21 00 – Construction Surveying

1.2 PHYSICAL DATA:

- 1.2.1 Data and information furnished or referred to below is for the Contractor's information. The Engineer shall not be responsible for any interpretations or conclusions drawn from the data or information by the Contractor.
 - 1.2.1.1 The physical conditions indicated on the drawings and in the specifications are the results of site investigations by surveys.

1.3 LAYOUT OF WORK:

- 1.3.1 See Part 2 - Products and Part 3 - General, Project Layout in Section 02 21 00, Construction Surveying.

1.4 TESTS AND INSPECTIONS:

- 1.4.1 The testing organization shall be an independent laboratory acceptable to the Engineer. The laboratory shall perform testing and other technical services as directed by, and with the approval of the Engineer.
- 1.4.2 Copies of all laboratory test and inspection reports shall be issued promptly and directly to the Owner, Engineer, the Contractor, and to other such persons or authorities as may be specified by the Engineer.
- 1.4.3 The Contractor shall notify the independent laboratory and the Engineer in sufficient time prior to the required time of inspection for them to make all inspections and tests. He shall also furnish such casual labor and all facilities which are necessary to obtain and handle samples at the project and to facilitate the specified inspections and tests. This shall include equipment for the Engineer to make his final inspection after all work is complete.

1.5 CONTRACTOR'S LIABILITY INSURANCE:

- 1.5.1 Copies of certificates of all the required insurances shall be submitted to the Owner prior to the commencement of work. The completed operations insurance to be maintained by the Contractor shall be maintained for a period of one year after final payment.
- 1.5.2 The limits of liability for the insurance shall provide coverage for not less than the following amounts or greater where required by law:
- 1.5.3 Comprehensive General Liability and Comprehensive Automobile Liability:
 - 1.5.3.1 Bodily Injury Liability Insurance, in an amount not less than one million dollars (\$1,000,000.00) for injuries, including wrongful death to any one person, subject to the same limit for each person in an amount not less than one million dollars (\$1,000,000.00) on account of one accident.
 - 1.5.3.2 Property Damage Insurance in an amount not less than one million dollars (\$1,000,000.00) for damage on account of any one accident and in an amount not less than two million dollars (\$2,000,000.00) for damages on account of all accidents.

1.5 OWNER INDEMNIFICATION:

- 1.6.1 To the fullest extent permitted by law, the Contractor agrees to indemnify, hold harmless, save and defend the Owner, Engineer, and their agents and employees, against all claims, liens, liabilities, losses, damages, or injuries, including, but not limited to, court costs, investigative costs, expenses, and attorneys' fees, whether or not caused by the actual or claimed active or passive negligence, of the Owner, Engineer, or the agents, employees, or representatives of any of them either as the sole or a contributing cause, for claims, liens, liabilities, losses, damages, or injuries to tangible or intangible property, wherever situated, including loss of use thereof, owned by the Owner, Engineer, or any other person regardless of whether that person is involved in the work under the contract or subcontracts, or to bodily or personal injuries, sickness, disease, or death resulting at any time therefrom, sustained by any person or persons, including, but not limited to, any employee or representative of any subcontractor, which claims, liens, liabilities, losses, damages or injuries arise out of or in connection with or result from, directly or indirectly, building operations from which arise claims by person or persons on the building premises in connection with the contract or subcontract, or the execution of the contract or subcontracts by the Contractor or any subcontractors or any one employed directly or indirectly by any one of them or anyone for whose acts any of them may be liable.
- 1.5.2 The provisions requiring the furnishing of personal injury liability or property damage insurance, the limitations imposed under workers' compensation acts, shall not be construed to limit, affect, or impair the generality of the foregoing.
- 1.5.3 Should any part of this indemnification clause be held to be invalid, the remainder shall be in full force and effect.

END OF SECTION

SECTION 01 71 13 – MOBILIZATION

PART 1 – GENERAL

1.1 WORK INCLUDED

- 1.1.1 See Section 01 20 00 – Measurement and Payment, Part 1.5.1 for mobilization scope of work.

1.2 RELATED SECTIONS

- 1.2.1 Section 02 93 00 – Site Restoration
- 1.2.2 Agreement Between Owner and Contractor for Construction Contract

1.3 METHOD OF MEASUREMENT

- 1.3.1 See Section 01 20 00 – Measurement and Payment, Part 1.5.1 for measurement and payment related to mobilization.

END OF SECTION

DIVISION 2 – EXISTING CONDITIONS

SECTION 02 06 00 – DEMOLITION

PART 1 - GENERAL

1.1 WORK INCLUDED

1.1.1 See Section 01 20 00 – Measurement and Payment, Part 1.5.3 and 1.5.4 for demolition scope of work.

1.1.2 Related Work

1.1.2.1 Section 35 31 19 – Armor Stone Revetment

1.2 EXISTING CONDITIONS

1.2.1 Conduct demolition to minimize interference with adjacent structures.

1.2.2 Provide, erect and maintain temporary barriers and security devices.

1.2.3 Conduct operations with minimum interference to public or private thoroughfares. Maintain egress and access at all times.

PART 2 - PRODUCTS

(Not Used)

PART 3 - EXECUTION

3.1 PREPARATION

3.1.1 Protect existing materials and adjacent structures which are not to be demolished.

3.2 EXECUTION

3.2.1 Demolish indicated structures and appurtenances in an orderly and careful manner.

3.2.2 Cease operations and notify the Engineer immediately if adjacent structures appear to be endangered. Do not resume operations until corrective measures have been taken.

3.2.3 Demolished concrete may be re-sized and used as Filter Stone or Quarry Run Core stone as long as the recycled concrete meet the size and quality requirements of these materials per the Contract Drawings and Section 35 31 19, Armor Stone Revetment. All other concrete rubble shall be disposed of in an Engineer-approved facility offsite.

3.2.4 Remove and promptly dispose of contaminated, vermin infested, or dangerous materials encountered.

3.2.5 Do not burn or bury materials on site.

END OF SECTION

SECTION 02 21 00 - CONSTRUCTION SURVEYING

PART 1 - GENERAL

1.1 WORK INCLUDED

- 1.1.1 The work under this Section includes providing all labor, materials, tools and equipment necessary to perform all surveying and staking necessary for the completion of the Project in conformance with the Contract Drawings and Specifications and standard engineering and surveying practices, including all calculations required to accomplish the WORK.
- 1.1.2 The Contractor is responsible for the following:
- 1.1.2.1 Establishing grades, lines, and levels, by use of recognized engineering survey practices.
 - 1.1.2.2 Locating and protecting control and reference points and establishing new points as required.
 - 1.1.2.3 Staking, referencing and all other actions necessary to preserve and restore land monuments and property corners which are situated within the Project area, and to establish monuments as shown on the Contract Drawings.
- 1.1.3 All work described in this section is the responsibility of the Contractor. The Contractor is not allowed to hire the Engineer as a subcontractor for this task.

1.2 RELATED WORK

- 1.2.1 Section 01 60 00 – Special Contract Requirements
- 1.2.2 Section 31 23 00 – Excavation and Backfill
- 1.2.3 Section 35 31 19 – Armor Stone Revetment

1.3 CONSTRUCTION SURVEY AND STAKING TOLERANCES

- 1.3.1 The Contractor shall provide construction surveying and staking to the tolerances specified below:

Type	Horizontal Tolerance (feet)	Vertical Tolerance (feet)
Stakes	0.01	N/A
All other surveying above water	0.05	0.10
All other surveying below water	0.20	0.20

1.4 SURVEY DATA FORMAT

- 1.4.1 All survey data shall be provided in the coordinate system, datums, and units listed on the Contract Drawings. Nevertheless, the Contractor shall note the coordinate system, datums, and units with each submittal of survey data to the Engineer.

- 1.4.2 All survey data shall be provided in AutoCAD 2025 *.DWG format, AutoCAD 2022 *.DWG format, or AutoCAD 2018 *.DWG format. Where submittals require the submission of coordinate points (i.e.: topographic survey points, pile locations, etc.), points shall be also be provided in plain-text as a comma separated value (*.CSV) file or Excel format.

PART 2 - PRODUCTS

2.1 GENERAL

- 2.1.1 The Contractor shall furnish, at the Contractor's own expense, all such stakes, spikes, steel pins, templates, platforms, equipment, tools and material and all labor as may be required in laying out any part of the work. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other markers established by him until authorized to remove them. If any of the control points are destroyed by or through the negligence of the Contractor prior to their authorized removal, they shall be replaced by the Contractor. The Engineer may require that work be suspended at any time when horizontal and vertical control points established at the site by the Contractor are reasonably adequate to permit checking the work. Such suspension will be withdrawn upon proper placement of the control points.

PART 3 - EXECUTION

3.1 GENERAL

- 3.1.1 All surveying shall be done by, or under the direction of, a registered Professional Surveyor licensed in the State of Ohio, unless this requirement is waived in writing by the Owner and Engineer.
- 3.1.2 The Owner or Engineer will supply information relative to the approximate locations of monuments and corners, but final responsibility for locations, referencing, and restoration shall rest with the Contractor.
- 3.1.3 In the event the Contractor does not replace the survey monuments and property corners disturbed by the Contractor's operations, the Owner may, after first notifying the Contractor, replace the monuments in question. The cost of such replacements shall be deducted from payments to the Contractor.
- 3.1.4 The Contractor shall provide the Engineer with a copy of all surveyors' notes, if requested by the Engineer, prior to each Pay Request that includes Construction Surveying as a payment item.
- 3.1.5 The Contractor shall provide the Owner with a copy of all surveyors' notes, prior to the request for final payment, and include the information on the record drawings.
- 3.1.6 The Contractor shall obtain all information necessary for as-built plan production, from actual measurements and observations made by its own personnel, including subcontractors, and submit this information to the Engineer.
- 3.1.7 Field notes shall be kept in standard bound notebooks in a clear, orderly and neat manner, consistent with standard engineering and surveying practices. The Contractor's field books shall be available for inspection by the Engineer at any time.
- 3.1.8 All field survey notes, including those which become source documentations from which quantities for payment are computed, shall be recorded by a notekeeper furnished by the Contractor. The notekeeper shall be thoroughly familiar with generally accepted standards of good survey notekeeping practice.

3.2 SURVEY BENCHMARKS

- 3.2.1 Verify survey benchmarks and intended elevations for the Work are as indicated.
- 3.2.2 Protect benchmarks, survey control points, and existing structures to remain from damage or displacement.

3.3 PROJECT LAYOUT

- 3.3.1 It shall be the responsibility of the Contractor to maintain and preserve all stakes and other markers established by the Contractor until authorized to remove them. If any of the control points are destroyed by or through the negligence of the Contractor prior to their authorized removal, they shall be replaced by the Contractor. The Engineer may require that work be suspended if at any time when horizontal and vertical control points established at the site by the Contractor are not reasonably adequate to permit checking the work. Such suspension will be withdrawn upon proper placement of the control points.
- 3.3.2 The Contractor shall lay out the work by establishing all lines and grades at the site necessary to control the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the Contract Drawings.
- 3.3.3 The Contractor shall perform all staking necessary to delineate clearing and/or grubbing limits; all cross sections necessary for determination of excavation and embankment quantities, including intermediate and/or remeasure cross sections as may be required; all slope staking; all staking of piles, sheet piles, and walkways, including the necessary checking to establish the proper location and grade to best fit the conditions on site; the setting of such finishing stakes as may be required; the staking of right-of-way; the staking, referencing and other actions as may be required to preserve or restore land monuments and property corners; and all other staking necessary to complete the project.

END OF SECTION

SECTION 02 93 00 – SITE RESTORATION

PART 1 – GENERAL

1.1 WORK INCLUDED:

- 1.1.1 See Section 01 20 00 – Measurement and Payment, Part 1.5.10 for site restoration scope of work.

1.2 RELATED SECTIONS:

- 1.2.1 Section 01 30 00 – Administrative Provisions
- 1.2.2 Section 01 52 00 – Construction Facilities and Temporary Controls
- 1.2.3 Section 01 71 13 – Mobilization

1.3 SUBMITTALS:

- 1.3.1 In order to facilitate determination of damages, Contractor shall photograph the work area with a digital camera or video camera prior to starting work and e-mail the digital images or video files to the Engineer. The Contractor shall use cameras capable of including the latitude and longitude with the metadata for each digital image or video file and ensure that they are logged with each digital image or video file.
- 1.3.2 The Contractor shall submit seed certifications for all bags used in the project.

1.4 DELIVERY, STORAGE AND HANDLING:

- 1.4.1 Deliver grass seed in original containers showing analysis of seed mixture, percentage of pure seed, year of production, net weight, date of packaging, and location of packaging. Damaged packages are not acceptable.

1.5 MAINTENANCE:

- 1.5.1 Maintain vegetated surfaces and supply additional topsoil where necessary, including areas affected by erosion.
- 1.5.2 Replant damaged grass areas showing root growth failure, deterioration, bare or thin spots, and eroded areas.

PART 2 – PRODUCTS

2.1 SEED MIXTURE:

- 2.1.1 Use ODOT Item 659 Class 1 seed mixture.

2.2 MULCH:

- 2.2.1 Mulching material: Oat or wheat straw, reasonably free from weeds, foreign matter detrimental to plant life, and in a dry condition.

- 2.2.2 Establishment blanket: Uniform open weave jute matting; excelsior matting; erosion control mulching fabric consisting of knitted construction of yard interwoven with strips of biodegradable paper; or organic fiber protective fiber mat consisting of half-inch layer of chopped straw, knitted into mat with thin netting of biodegradable polypropylene.

2.4 TOPSOIL:

- 2.2.1 Minimum of 4" thickness.

PART 3 – EXECUTION

3.1 EXAMINATION:

- 3.1.1 The Contractor shall not begin work in this section until the final grading has been approved by the Engineer.

3.2 PREPARATION:

- 3.1.1 The Contractor shall test the soil for the appropriate pH. The test results shall be submitted to the Engineer.
- 3.1.2 If needed, the Contractor shall apply agricultural liming material as specified in Bulletin 472 "Agronomy Guide", published by the Cooperative Extension Service, The Ohio State University.

3.3 APPLICATION:

- 3.3.1 The seeding shall be completed within three days after completion of final grading or as soon thereafter as conditions are favorable. Seeding shall occur between March 1 and October 30. Between October 30 and March 1, apply temporary seed according to ODOT Item 207.
- 3.3.2 The seedbed shall be prepared by pulverizing and breaking up the soil to a minimum depth of two inches with a disk harrow, drag harrow, spike tooth harrow or similar tool. All rocks over two inches in diameter, clods and undesirable material that would interfere with seeding operation shall be removed.
- 3.3.3 The seed shall be broadcast uniformly over the seedbed at a rate of 220 pounds per acre (5 pounds per 1,000 square feet) using methods and equipment acceptable to the Engineer. "Drilling" of seeds is not allowed unless permitted otherwise by the Engineer or Owner. The seeded area shall be passed over with a cultipacker or similar tool to help cover more seed and improve seeding establishment. Application of grass seed and fertilizer at the same time, in the same machine is not permitted.
- 3.3.4 Seed sowing is not permitted immediately following rain, when the ground is too dry, or during windy periods.
- 3.3.5 The approved mulch shall be applied over the seeded area at a rate of 2 tons per acre (one bale per 1,000 square feet) for straw. Hydro mulching will not be permitted.
- 3.3.6 The Contractor shall seed and mulch all disturbed areas.

- 3.3.7 Seeded areas shall be watered as necessary to promote good growth during the germination and establishment period. During the establishment period the Contractor shall water a minimum of one inch over the seeded area two times per week. In dry weather, more frequent watering will be required.

3.4 INSTALLATION:

- 3.4.1 Establishment Blanket.
- 3.4.1.1 Cover seeded slopes where grade is 2:1 or greater with establishment blanket.
 - 3.4.1.2 Roll matting down over slopes without stretching or pulling. Lay matting smoothly on soil surface, burying top end of each section in narrow 6-inch trench. Leave 12-inch overlap from top roll over bottom roll. Leave 4-inch overlap over adjacent section.
 - 3.4.1.3 Staple outside edges and overlaps at 36-inch intervals.
 - 3.4.1.4 Lightly dress slopes with topsoil to ensure close contact between matting and soil.
 - 3.4.1.5 In ditches, unroll matting in direction of flow. Overlap ends of strips 6-inch with upstream section on top.

3.5 ADJUSTING:

- 3.5.1 Any vegetated areas which are found to not have an adequate growth of cover during the first year shall be re-seeded as soon as weather conditions permit, at no additional cost to the Owner.

3.6 INSTALLATION:

- 3.6.1 The Contractor shall secure the work area and protect the vegetated areas until vegetation is accepted.

END OF SECTION

DIVISION 31 – EARTHWORK

SECTION 31 00 00 – SITE CLEARING

PART 1 – GENERAL

1.1 WORK INCLUDED

- 1.1.1 See Section 01 20 00 – Measurement and Payment, Part 1.5.2 for site restoration scope of work.
- 1.1.2 All removed items shall be disposed of at the Contractor's expense.

1.2 RELATED WORK

- 1.1.1 Supplementary Conditions – Permits
- 1.1.2 Section 31 23 00 – Excavation and Backfill

1.3 GENERAL

- 1.3.1 Remove or save all trees, shrubs, and plants as designated on the plans. Preserve all vegetation and objects not designated for removal. Paint cut or scarred surfaces of trees or shrubs selected for retention according to Ohio Department of Transportation (ODOT) Construction and Material Specifications Item 666.04.
- 1.3.2 In order to retard and prevent the spread of destructive insects, including the emerald ash borer and Asian longhorned beetle, limit the movement of regulated articles according to Ohio Administrative Codes 901:5-56 and 901:5-57. Observe requirements for handling and transporting of regulated articles in quarantined areas as defined by the Ohio Department of Agriculture (www.agri.ohio.gov). The following are considered regulated articles and are subject to the quarantine established by the Ohio Department of Agriculture:
 - 1.3.3.1 Deciduous trees of any size
 - 1.3.3.2 Deciduous limbs and branches
 - 1.3.3.3 Any cut non-coniferous (non-evergreen) firewood.
 - 1.3.3.4 Deciduous tree bark and deciduous tree wood chips larger than 1 inch (25 mm).
 - 1.3.3.5 Deciduous logs and lumber with the bark, outer inch of sapwood, or both attached.
 - 1.3.3.6 Any item made from or containing deciduous tree wood capable of spreading emerald ash borer or Asian longhorned beetle.
 - 1.3.3.7 Any means of conveyance capable of spreading emerald ash borer or Asian longhorned beetle.
- 1.3.3 Follow all other federal and state emerald ash borer and Asian Longhorned beetle quarantines.
- 1.3.4 To reduce potential adverse effects to endangered and threatened bat species, trees (woody stems greater than 2 inches in diameter at breast height) shall not be cut between April 1 and September 30.

- 1.3.5 Other restrictions regarding the timing of clearing and grubbing work are noted in the U.S. Army Corps of Engineers permit.

1.4 TREE REMOVAL, CLEARING AND GRUBBING

- 1.4.1 Clear and grub all trees and stumps marked for removal and all surface objects, brush, roots, and other protruding obstructions not designated to remain, except for special treatments listed:
 - 1.4.1.1 In locations to be seeded, remove stumps at least 6 inches below ground surface.
 - 1.4.1.2 In unseeded areas to be rounded at the top of backslopes, cut the stumps flush with or below the surface of the final slope line.
 - 1.4.1.3 The Contractor may leave undisturbed stumps and roots, and nonperishable solid objects 6 inches above the existing ground surface in the plan embankment construction locations when the embankment height is greater than 9 feet as measured vertically from the existing ground surface to the proposed ground surface, and
 - 1.4.1.4 In locations outside of the construction limits of the cut and embankment areas not to be seeded, the Contractor may leave sound stumps 24 inches above the existing ground surface. 1.3.2 Except in areas to be excavated, backfill stump holes and other holes created by removing obstructions with ODOT Item 203 embankment material. Place and compact according to ODOT Item 203.
- 1.4.3 Remove low hanging, unsound, or unsightly branches on trees or shrubs designated to remain. Trim branches of trees extending over the roadbed to provide a clear height of 20 feet above the roadbed surface.
- 1.4.4 Dispose of debris contaminated with garbage, solid waste, or hazardous waste or material according to other contract items.

1.5. ROCK

- 1.5.1 If the Contractor encounters rock during site clearing work that meets the size and quality requirements of Quarry Run Stone, ODOT Type "B" Armor Stone, or ODOT Type "C" Filter Stone, per Section 35 31 19, Armor Stone Revetment, the Contractor may set aside the material for reuse in the new Armor Stone structure.

PART 2 – PRODUCTS

(Not used)

PART 3 – EXECUTION

3.1 BURNING

- 3.1.1 Burning is not permitted on site.

3.2 CLEANING

- 3.2.1 Identify waste and salvage areas for stockpiling of removed materials.
- 3.2.2 Promptly dispose of excess and unsuitable material off site.

- 3.2.3 Remove debris, junk, and trash from site.
- 3.2.4 Leave site in clean condition, ready for subsequent work.
- 3.2.5 Clean up spillage and wind-blown debris before entering public or private property, adjacent to site.

END OF SECTION

SECTION 31 05 22 – GEOTEXTILE FILTER FABRIC

PART 1 - GENERAL

1.1 WORK INCLUDED:

- 1.1.1 See Section 01 20 00 – Measurement and Payment, Part 1.5.9 for geotextile filter fabric scope of work.

1.2 RELATED WORK

- 1.2.1 Section 31 23 00 – Excavation and Backfill

1.3 SUBMITTALS

- 1.3.1 Submit manufacturer's literature and a sample of the Geotextile Fabric to the Engineer for approval prior to purchasing material.
- 1.3.2 Submit photographs of the Geotextile Fabric placement and manufacturer's receipts for the fabric as outlined in Section 01 20 00, Measurement and Payment, Bid Item No. 9, Geotextile Filter Fabric.

PART 2 - PRODUCTS

- 2.1.1 Materials: Geotextile Fabric shall be a nonwoven, needle-punched polypropylene fabric with the following listed minimum properties:

Fabric Property	Unit	Test Method	Physical Properties
Minimum tensile strength	LBS	ASTM D 4632	200
Minimum elongation	%	ASTM D 4632	15%
Minimum puncture strength	LBS	ASTM D 6241	440
Minimum tear strength	LBS	ASTM D 4533	50
Apparent opening size	Mils	ASTM D 4751	24
Minimum permittivity	Sec ⁻¹	ASTM D 4491	0.2 sec ⁻¹

PART 3 - EXECUTION

3.1 SHIPMENT AND STORAGE

- 3.1.1 During all periods of shipment and storage, the fabric shall be protected from direct sunlight, ultraviolet rays, temperatures greater than 140° F, mud, dirt, dust and debris. To the extent possible, the fabric shall be maintained wrapped in a heavy duty protective covering.

3.2 INSTALLATION

- 3.2.1 The geotextile filter fabric shall be placed as shown on the Contract Drawings. At the time of installation, fabric shall be rejected if it has defects, rips, holes, flaws, deterioration or damage incurred during manufacture, transportation or storage.
- 3.2.2 Overlap – Geotextile Fabric shall be overlapped a minimum of two (2) feet at each seam.

END OF SECTION

SECTION 31 23 00 – EXCAVATION AND BACKFILL

PART 1 - GENERAL

1.1 SCOPE OF WORK

- 1.1.1 The work of this section shall include excavation and grading as needed to construct the new project features as shown on the Contract Drawings and as specified in this section:

- 1.1.1.1 Make excavations to accommodate the new project features.
- 1.1.1.2 Provide materials for backfilling temporary excavations necessary to construct the project as shown on the Contract Drawings.
- 1.1.1.3 Grade surfaces to meet finished grades indicated.

- 1.1.2 Refer to other sections for details related to excavations including but not limited to temporary excavation support systems.

1.2 RELATED DOCUMENTS

- 1.2.1 Section 35 31 19 – Armor Stone Revetment

1.3 REFERENCES

- 1.3.1 American Society for Testing and Materials (ASTM) Publications:

D1556: Test Method for Density and Unit Weight of Soil in Place by the Sand-Cone Method.

D1557: Test Method for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lb/ft³ (600 kN-m/m³)).

D2167: Test Method for Density and Unit Weight of Soil in Place by the Rubber Balloon Method.

D2922: Test Method for Density of Soil and Soil-Aggregate in Place by Nuclear Methods. (Shallow Depth).

D4718: Practice for Correction of Unit Weight and Water Content for Soils Containing Oversized Particles.

D5080: Test Method for Rapid Determination of Percent Compaction.

D6938 Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)

- 1.3.2 Ohio Department of Transportation (ODOT) Construction and Material Specifications

AASHTO #57 Stone Gradation, ODOT 703.16B

- 1.3.3 Occupational Safety and Health Administration (OSHA) Standards and Regulations

Title 29: Subpart P - Excavations, Trenching and Shoring.

1.4 DEFINITIONS

- 1.4.1 Unauthorized Excavation: All excavations carried out beyond the lines and grades given or specified, together with the disposal of such material and all excavation and other work resulting from slides, cave-ins, swelling or upheavals shall be at the Contractor's expense. All spaces resulting from unauthorized excavations or from slides or cave-ins shall be refilled at the Contractor's expense with native material or imported material similar to the native material.

1.5 QUALITY ASSURANCE AND QUALITY CONTROL

- 1.5.1 Excavations shall be performed in the dry, and kept free from water, snow and ice during construction. Bedding and backfill material shall not be placed in water. Water shall not be allowed to rise upon or flow over the bedding and backfill material.
- 1.5.2 Provide and maintain temporary excavation support system as required.
- 1.5.3 The Contractor shall be solely responsible for making all excavations in a safe manner. All excavation, trenching, and related sheeting, bracing, etc. shall comply with the requirements of OSHA excavation safety standards (29 CFR Part 1926 Subpart P) and State requirements. Where conflict between OSHA and State regulations exists, the more stringent requirements shall apply.
- 1.5.4 Do not excavate or fill until all the required submittals have been reviewed by the Engineer.
- 1.5.5 Formulate excavation backfilling and filling schedule and procedures to eliminate possibility of undermining or disturbing foundations of partially and completed structures and embankments or existing structures, embankments, and utility lines.
- 1.5.6 Construction Tolerances
- 1.5.6.1 Construct finished surfaces to plus or minus 1 inch of the elevations indicated.
- 1.5.6.2 Grade cut and fill areas to plus or minus 0.20 foot of the grades indicated.
- 1.5.6.3 Complete embankment edges to plus or minus 6 inches of the slope lines indicated.
- 1.5.6.4 Provide the Owner with adequate survey information to verify compliance with above tolerances.

PART 2 - PRODUCTS

(Not used)

PART 3 - EXECUTION

3.1 GENERAL

- 3.1.1 If grading is needed, grade site to maintain a level unrutted condition and to eliminate puddling of surface and subsurface water.
- 3.1.2 Carry out program of excavation and excavation support systems to eliminate possibility of undermining or disturbing foundations of existing structures or of work previously completed under this Contract.
- 3.1.3 Excavate to lines and grades indicated in an orderly and continuous program. Exercise care to preserve material below and beyond the lines of excavations.

- 3.1.4 If grading is needed, regrade small, less than one cubic yard, boulders, rock fragments, construction debris and concrete encountered during excavation as a normal part of in-place soils.
- 3.1.5 During progress of work, conduct earth moving operations and maintain worksite to minimize the creation and dispersion of dust.
- 3.1.6 If the Contractor encounters rock excavation that meets the size and quality requirements of Quarry Run Stone, ODOT Type "B" Armor Stone, or ODOT Type "C" Filter Stone, per Section 35 31 19, Armor Stone Revetment, the Contractor may set aside the material for reuse in the new Armor Stone structure.

3.2 UTILITIES AND OTHER EXISTING FEATURES

- 3.2.1 Promptly notify the Owner when any unexpected subsurface facilities are encountered during excavation such as utility lines and appurtenances, walls and foundations.

3.3 SUBGRADE PREPARATION AND PROTECTION:

- 3.3.1 If material unacceptable for armor stone or filter stone placement above Ordinary High Water (in the opinion of the Engineer) is found at or below the grade to which excavation would normally be carried in accordance with the drawings and/or specifications, remove such material to the required width and depth as directed by the Engineer. Backfill the over-excavation with Number 57 Gravel.

3.4 BACKFILLING

3.4.1 General:

- 3.4.1.1 Do not place frozen materials in backfill or place backfill upon frozen material. Remove previously frozen material or treat before new backfill is placed.
- 3.4.1.2 Do not place, spread, roll or compact fill material during unfavorable weather conditions. If interrupted by heavy rain or other unfavorable conditions, do not resume until ascertaining that the moisture content and density of the previously placed soil are as specified.
- 3.4.1.3 Do not use puddling, ponding or flooding as a means of compaction.
- 3.4.1.4 Do not drop backfill material into trench from a height of more than 5-feet or in a manner which will damage the pipe, conduit, or other structure within trench.
- 3.4.1.5 Do not place backfill against or on structures until they have attained enough strength to support the loads (including construction loads) to which they will be subjected, without distortion, cracking, or other damage.

3.4.2 Allowance for Shrinkage

- 3.4.2.1 Build backfill to a height above finished grade which will, in the opinion of the Owner, allow for the shrinkage or consolidation of material. Initially, provide at all points, an excess of at least one percent of total height of backfill measured from stripped surface to top of finished surface.

- 3.4.2.2 Supply specified materials and build up low places as directed, without additional cost if embankment or backfilling settles so as to be below the indicated level for proposed finished surface at any time before final acceptance of the Work.

3.4.3 Material Placement and Compaction Requirements

- 3.4.3.1 Acceptable materials for use as non-structural fill:

- 3.4.3.1.1 Dump and spread in layers not to exceed 12-inches uncompacted thickness. Deposit material evenly around structure to avoid unequal soil pressure.

- 3.4.3.1.2 Compact to not less than 90 percent unless otherwise indicated.

3.5 STOCKPILING, HAULING, AND DISPOSAL

- 3.5.1 Carefully remove loam and topsoil from excavated areas and store that which is required for this project or as directed by the Owner separately for further use or furnish equivalent loam and topsoil as directed.

3.5.2 Stockpiling Restrictions

- 3.5.2.1 Place excavated material at the approved stockpile locations and in no case closer than 3 feet from edge of excavations to prevent cave-ins or bank slides.

- 3.5.2.2 Stockpile locations and heights shall be restricted to limit surcharge loading on underground structures as identified and specified in the Contract Documents.

- 3.5.2.3 Silt fence shall be placed around and 2' off the bottom footprint of the final stockpile configuration.

- 3.5.3 Haul away and dispose of surplus excavated materials at locations directed by the Owner at no additional cost to the Owner.

- 3.5.4 All excavated materials not used as backfill shall be disposed of off-site in accordance with all applicable local, state and federal regulations.

3.6 CLOSEOUT

- 3.6.1 Restore existing property or structures as promptly as practicable.

- 3.6.2 Restore surfaces damaged by the Contractor's operations to a condition at least equal to that in which they were found immediately before work commenced. Use suitable materials and methods for such restoration.

END OF SECTION

DIVISION 35 – WATERWAY AND MARINE CONSTRUCTION

SECTION 35 31 19 – ARMOR STONE REVETMENT

PART 1 – GENERAL

1.1 WORK INCLUDED

- 1.1.1 See Section 01 20 00 – Measurement and Payment, Part 1.5.5, 1.5.6, 1.5.7, and 1.5.8 for toe stone, armor stone, filter stone, and core stone scope of work.

1.2 RELATED WORK

- 1.2.1 Section 02 06 00 – Demolition
- 1.2.2 Section 31 00 00 – Site Clearing
- 1.2.3 Section 31 23 00 – Excavation and Backfill

1.3 APPLICABLE PUBLICATIONS

- 1.3.1 State of Ohio Department of Transportation (ODOT) Construction and Material Specifications, January 1, 2023.
- 1.3.2 ASTM C127 (2015) Standard Test Method for Density, Relative Density (Specific Gravity), and Absorption of Coarse Aggregate
- 1.3.3 ASTM C136/C136M (2014) Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates
- 1.3.4 ASTM D3740 (2012a) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used
- 1.3.5 ASTM D4992 (2014; E 2015) Evaluation of Rock to be Used for Erosion Control
- 1.3.6 ASTM D5312/D5312M (2012; R 2013) Evaluation of Durability of Rock for Erosion Control under Freezing and Thawing Conditions
- 1.3.7 ASTM D5313/D5313M (2012; R 2013) Evaluation of Durability of Rock for Erosion Control Under Wetting and Drying Conditions
- 1.3.8 ASTM D5519 (2014) Particle Size Analysis of Natural and Man-Made Riprap Materials
- 1.3.9 ASTM D75/D75M (2014) Standard Practice for Sampling Aggregates
- 1.3.10 COE CRD-C 144 (1992) Standard Test Method for Resistance of Rock to Freezing and Thawing
- 1.3.11 COE CRD-C 169 (1997) Standard Test Method for Resistance of Rock to Wetting and Drying
- 1.3.12 AASHTO T 103 Standard Method of Test for Soundness of Aggregates by Freezing and Thawing

1.4 EXCESS MATERIAL

- 1.4.1 The Contractor shall carefully estimate the amount of Armor Stone, Toe Stone, Filter Stone, and Quarry Run Stone required to construct the project when ordering materials.
- 1.4.2 If more stone material is delivered to the project site than is required to construct the project in accordance with the Contract Drawings, the Contractor shall remove the excess stone at its own expense prior to Final Completion unless allowed otherwise by the Engineer or Owner.

1.5 STORAGE

- 1.5.1 Armor Stone, Toe Stone, Filter Stone, and Quarry Run Stone purchased for the work but not stored at the project site shall be set aside in a designated area and not be used on any other project.

PART 2 – PRODUCTS

2.1 MATERIALS

- 2.1.1 General: All stone materials shall be durable, sound, free from cracks, seams, and other defects which tend to increase deterioration from natural causes. All stone materials shall be highly resistant to weathering and disintegration under freezing and thawing and wetting and drying as evidenced by laboratory tests and/or service records. The Engineer at any time during the contract may reject any materials, at the source or job site, not meeting the requirements of these specifications. Materials which have been delivered to the project site and are rejected shall be removed from the project site at the Contractor's expense.
- 2.1.2 Armor Stone and Toe Stone: Armor Stone and Toe Stone shall consist of limestone boulders of the sizes indicated on the Contract Drawings and specified in this section.
- 2.1.3 Filter Stone and Quarry Run Stone: Filter Stone and Quarry Run Stone shall consist of limestone boulders or Recycled Portland cement concrete (RPCC) fragments of the sizes indicated on the Contract Drawings and specified in this section.

2.2 QUALITY

- 2.2.1 Specific gravity of all materials shall be as determined by ASTM C-127 for Bulk Specific Gravity (Saturate-surface-Dry Basis) and water having a weight of 62.4 pounds per cubic foot.
- 2.2.2 All stone materials shall be "Angular" (having sharply defined edges) to "Subangular" (having a shape in between Rounded and Angular) for a higher degree of interlocking to provide stability to the protected area. The use of round, thin, flat, or long and needle-like shapes is not allowed.
- 2.2.3 The elongation of any stone shall not be less than one-third which shall mean the ratio of its least dimension to its greatest dimension.
- 2.2.4 Quarry Operations and Handling: Quarry operations shall be conducted in a manner that will produce stone conforming to the requirements specified and may include selective quarrying, handling, processing, blending and loading as necessary. Blasting and handling of rock shall be controlled to produce rock of the size ranges and quality specified. Techniques such as the use of proper hole diameter, hole depth, hole angle, burden and spacing distances, types and distribution of explosives, delay intervals and sequence, removal of muck piles between each shot, and special handling techniques will be required as necessary to produce the specified

materials. All aspects of blasting operations shall be specifically designed so that the end product is not damaged from the blasting technique.

- 2.2.5 Recycled Portland cement concrete (RPCC) is not allowed to be used as Armor Stone or Toe Stone.

2.3 GRADATION OF MATERIALS

- 2.3.1 General: The grading of the Armor Stone and Toe Stone shall be determined by visual inspection of the load by the Contractor before it is placed, or, if so ordered by the Engineer, by dumping individual loads on a flat surface and sorting and measuring the individual stones or rubble contained in the load.

- 2.3.2 Armor Stone: Armor Stone shall be quarried limestone armor units. Smaller stone within the gradation shall be used in the lower layer or near the revetment crest. Larger stone within the gradation shall be used in the outer layer of the revetment.

- 2.3.2.1 The gradation of the Armor Stone shall conform to the State of Ohio Department of Transportation Construction and Material Specifications Part 703.19.B, Type B material or the following:

Percent Passing	Size (inches)
92.5	24
50	18
7.5	12

- 2.3.2.2 Armor Stone material smaller than 12 inches in size shall consist predominantly of rock spalls and rock fines and be free of soil.

- 2.3.3 Toe Stone: Toe Stone shall be quarried limestone armor units of the size range indicated on the Contract Drawings. The median size of the toe stone by weight shall be the average of the upper and lower limit of the size range by weight.

- 2.3.4 Filter Stone: Filter Stone shall be quarried limestone armor units or RPCC fragments with rebar extending no more than 1/2 inch from the surface of the concrete.

- 2.3.4.1 The gradation of the Filter Stone shall conform to the State of Ohio Department of Transportation Construction and Material Specifications Part 703.19.B, Type C material or the following:

Percent Passing	Size (inches)
92.5	18
50	12
7.5	6

- 2.3.4.2 Filter Stone material smaller than 6 inches in size shall consist predominantly of rock spalls and rock fines and be free of soil.

- 2.3.4 Quarry Run Stone: Quarry Run Stone shall be quarried limestone or RPCC fragments with rebar extending no more than 1/2 inch from the surface of the concrete.

PART 3 – EXECUTION

3.1 STONE PLACEMENT

3.1.1 General:

3.1.1.1 The materials specified above shall be placed to the lines and grades indicated on the Contract Drawings and as further specified herein.

3.1.1.2 The outer surface of the Armor Stone and Toe Stone shall be no lower than the top surface shown on the Contract Drawings. The Contractor shall not underfill the Armor Stone template.

3.1.2 Armor Stone, Toe Stone, and Filter Stone: Armor Stone, Toe Stone, and Filter Stone shall be placed individually to produce a full layer thickness in one operation in a manner to avoid displacing or placing undue impact force on underlying material and to minimize chipping of stones. Stones shall be placed by mechanical means in a manner to produce a resultant mass of rock with the minimum practicable percentage of voids, and the maximum practicable interlocking and stone to stone contact. Rehandling of individual stones after initial placement may be required as necessary to achieve this result. Placement shall begin at the bottom of the slope with the placement of the Toe Stones and then proceed upward. The largest Armor Stone shall be placed near the Toe Stones.

3.1.3 All Stone Material: Mechanical means proposed for placing all classes of stone shall be approved by the Engineer. Generally, equipment shall be capable of placing stone near its final position before release and capable of moving the stone if necessary. Dragline buckets and skips shall not be acceptable for placement of stone material. Placement shall begin at the bottom of the slope as noted under “Armor Stone, Toe Stone, and Filter Stone” above and then proceed upward. Casting or dropping of stone over two (2) feet or moving by drifting and manipulating down the slope shall not be permitted. Stone shall not be stockpiled on completed sections of the Armor Stone structure. Final finishing of slopes shall be done as the material is placed.

END OF SECTION

REHABILITATION OF THE FORMER CON-AGRA PROPERTY

CITY OF HURON

417 MAIN STREET

HURON, OHIO 44839

EJCDC NO. C-520-2013

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION
CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between the City of Huron ("Owner") and
("Contractor").

EJCDC® C-520 (Rev. 1), Agreement Between Owner and Contractor for Construction Contract (Stipulated Price).
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and American Society of Civil Engineers. All rights reserved. Page 1 of 7

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	Description	Estimated Quantity	Unit	Unit Price	Extended Price
5	1-3 Ton Toe Stone	1000	TONS		
6	ODOT Type B Armor Stone	17000	TONS		
7	ODOT Type C Filter Stone	10000	TONS		
8	Quarry Run Core Stone	36000	TONS		
9	Geotextile Fabric	1700	SY		
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$.
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long

as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 12 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies,

or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. General Conditions (pages 1 to 65, inclusive).
 - 3. Supplementary Conditions (pages 1 to 64, inclusive).
 - 4. Specifications as listed in the Table of Contents of the Project Manual.
 - 5. Drawings (not attached but incorporated by reference) consisting of 17 sheets with each sheet bearing the following general title: New Stone Revetment at the Former Con-Agra Property.
 - 6. Addenda (numbers 1 to TBD, inclusive).
 - 7. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 2, inclusive).
 - b. Geotechnical report entitled "Geotechnical Evaluation Report, Stone Revetment – ConAgra Peninsula, Huron, Ohio, SME Project Number: 099504.00, May 30, 2025".
 - 8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

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

10.03 Successors and Assigns

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

10.04 Severability

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

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

REHABILITATION OF THE FORMER CON-AGRA PROPERTY

CITY OF HURON

417 MAIN STREET

HURON, OHIO 44839

EJCDC NO. C-700

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

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

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

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

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

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

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

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

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 - 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

REHABILITATION OF THE FORMER CON-AGRA PROPERTY

CITY OF HURON

417 MAIN STREET

HURON, OHIO 44839

SUPPLEMENTARY CONDITIONS – U.S. ARMY CORPS OF ENGINEERS PERMIT
LRB-2011-00033



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
478 MAIN STREET
BUFFALO, NEW YORK 14202

July 27, 2026

Regulatory Branch

SUBJECT: Department of the Army Permit No. LRB-2011-00033, Nationwide Permit No. 3 as Published in the Federal Register, (91 FR 768), on January 8, 2026.

Stuart Hamilton
City of Huron
417 Main Street
Huron, Ohio 44839

Dear Mr. Hamilton:

This pertains to the City of Huron's application for a Department of the Army permit to permanently discharge fill material below the ordinary high-water mark of approximately 1,492 linear feet of the Huron River to perform maintenance on an existing steel sheet pile wall located at 41 Cleveland Road East, in the City of Huron, Erie County, Ohio (Sheets 1-6 of 6).

I have evaluated the impacts associated with your proposal, and have concluded that they are authorized by the enclosed Nationwide Permit (NWP) provided that the attached conditions are satisfied.

Verification of the applicability of this NWP is valid until March 15, 2031 unless the NWP is modified, suspended, revoked, or the activity complies with any subsequent permit modification. Please note in accordance with 33 CFR part 330.6(b), that if you commence or are under contract to commence an activity in reliance of the permit prior to the date this Nationwide permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the terms and conditions, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of the permit, unless the permit has been subject to the provisions of discretionary authority.

It is your responsibility to remain informed of changes to the NWP program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website: <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>. Finally, note that if your activity is not undertaken within the defined period or the project

Regulatory Branch

SUBJECT: Department of the Army Permit No. LRB-2011-00033, Nationwide Permit No. 3 as Published in the Federal Register, (91 FR 768), on January 8, 2026.

specifications have changed, you must immediately notify this office to determine the need for further approval or reverification.

A copy of this letter has been sent to the Ohio Environmental Protection Agency, the Ohio Department of Natural Resources, and to Mark Cencer (KS Associates).

Questions pertaining to this matter should be directed to me at 716-879-4339 or by e-mail at: keith.c.sendziak@usace.army.mil

Sincerely,

A handwritten signature in cursive script that reads "Keith Sendziak".

Keith Sendziak
Biologist

Enclosures

U.S. Army Corps of Engineers (USACE) CERTIFICATION OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT For use of this form, see Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act; the proponent agency is CECW-COR.	<i>Form Approved -</i> OMB No. 0710-0003 <i>Expires 2027-10-31</i>												
The Agency Disclosure Notice (ADN)													
The Public reporting burden for this collection of information, 0710-0003, is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.													
PURPOSE: This form is used by recipients of U.S. Army Corps of Engineer Regulatory permits to certify compliance with the permit terms and conditions. Your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.													
Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the U.S. Army Corps of Engineers, Buffalo District, Regulatory Office. The certification can be submitted by email at LRB.Regulatory.PermitCompliance@usace.army.mil or by mail at the below address: U.S. Army Corps of Engineers Buffalo District Office Street Address: 478 Main Street City: Buffalo State: New York Zip Code: 14202													
COMPLETED BY THE CORPS													
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 35%;">Corps Action Number:</td> <td>LRB-2011-00033</td> </tr> <tr> <td>Permit Type: General Permit</td> <td></td> </tr> <tr> <td>General Permit Number and Name (<i>if applicable</i>):</td> <td>NWP 3 (Maintenance)</td> </tr> <tr> <td>Name of Permittee:</td> <td>City of Huron</td> </tr> <tr> <td>Project Name:</td> <td>maintenance of existing steel sheet pile wall</td> </tr> <tr> <td>Project Location (<i>physical address</i>):</td> <td>41 Cleveland Road East, in the City of Huron, Erie County, Ohio</td> </tr> </table>		Corps Action Number:	LRB-2011-00033	Permit Type: General Permit		General Permit Number and Name (<i>if applicable</i>):	NWP 3 (Maintenance)	Name of Permittee:	City of Huron	Project Name:	maintenance of existing steel sheet pile wall	Project Location (<i>physical address</i>):	41 Cleveland Road East, in the City of Huron, Erie County, Ohio
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Permit Type: General Permit													
General Permit Number and Name (<i>if applicable</i>):	NWP 3 (Maintenance)												
Name of Permittee:	City of Huron												
Project Name:	maintenance of existing steel sheet pile wall												
Project Location (<i>physical address</i>):	41 Cleveland Road East, in the City of Huron, Erie County, Ohio												
PERMITTEE'S CERTIFICATION													
Date Work Started: _____ Date Work Completed: _____ Enclose photographs showing the completed project (<i>if available</i>). I _____ hereby certify that the work authorized by the above referenced permit has been completed in accordance with all of the permit terms and conditions, and that any required compensatory mitigation has been completed in accordance with the permit conditions.													

Name	Date	Signature
------	------	-----------

EA2100021245-1 kann auch als designview 3d 2024Aurulent drawing: IECTS21245-1 Titled: Mr. 07, 2025 - 125mm

DATE	BY	ADJACENT PROPERTY OWNERS
-		STATE OF OHIO DEPT. OF NATURAL RESOURCES 2045 MORSE ROAD, COLUMBUS, OH 43229
		NORFOLK SOUTHERN CORP., TAXATION DEPT. 650 W. PEACHTREE ST. NW, ATLANTA, GA 30308
		DATUM: 0.0 LWD = 589.2 FEET (3.D. 1985)

DATE: 2-20-2025

DRAWN BY: CMO & DL

CHD BY: MPC

DWG. NAME: TITLE

SPATH: CIVIL 3D

F.B.

KS ASSOCIATES
KS Associates, Inc.
260 Burns Road, Suite 100
Lyria, OH 44035
P 440-365 4730
F 440-365 4790
www.ksassociates.com

TITLE SHEET
REHABILITATION OF THE
FORMER CON-ACRA PROPERTY
CITY OF HURON
417 MAIN STREET
HURON, OH 44839

SHEET 1	OF 6
JOB NO. 21245-1	

A circular professional engineer seal for the State of Ohio. The outer ring contains the text "STATE OF OHIO" at the top and "REGISTERED PROFESSIONAL ENGINEER" at the bottom, separated by small vertical lines. The center of the seal contains the name "CHRISTOPHER DAY" in a larger font, followed by the license number "E-85589" in a smaller font. A blue ink signature is written across the bottom half of the seal, overlapping the "REGISTERED PROFESSIONAL ENGINEER" text.

CHRISTOPHER M. DAY, P.E. OHIO REG. NO. 85589 DATE



OHIO
Utilities Protection
SERVICE
OHIO Electric Power

1-800-362-2764

CALL TOLL-FREE 24 HOURS A DAY
OR 1-800-362-2764 • TDD • 800

1. UNDERGROUND UTILITIES ARE SHOWN FROM RECORDS AND FIELD MARKINGS PROVIDED BY UTILITY COMPANIES AND AGENCIES. ACTUAL LOCATIONS MAY VARY. CONTACT OHIO UTILITIES PROTECTION SERVICE (OUPS) AT 1-800-362-2764 AT LEAST 48 HOURS PRIOR TO EXCAVATION.
2. VISIBLE SURFACE UTILITIES HAVE BEEN FIELD LOCATED UNLESS OTHERWISE NOTED.

1. HORIZONTAL DATUM IS OHIO STATE PLANE, NORTH ZONE, NAD83(2011) GRID NORTH; UNITS ARE U.S. SURVEY FEET.
2. VERTICAL DATUM IS IGLD 1985.
3. PROPERTY LINES ARE SHOWN FROM ERIE COUNTY GIS INFORMATION AND ARE NOT INTENDED TO REPRESENT A COMPLETE BOUNDARY SURVEY.
4. DATES OF SURVEYS:
 - A. FEDERAL NAVIGATION CHANNEL – MAY 1, 2024 BY THE U.S. ARMY CORPS OF ENGINEERS
 - B. UPLAND – JUNE 5-13, 2020 BY THE U.S. ARMY CORPS OF ENGINEERS
 - C. REMAINING SUBMERGED AREAS – NATIONAL OCEANOGRAPHIC AND ATMOSPHERIC ADMINISTRATION (NOAA) Chart 14843, APRIL 1, 2023 EDITION, <https://encdirect.noaa.gov/>.
5. DATE OF AERIAL PHOTOGRAPH: MARCH 28, 2023, <https://gis1.ort.ohio.gov/geodatedownload/>.

_____ PROPERTY LINE
 - - - - - FEDERAL CHANNEL LIMIT
 _____ ORDINARY HIGH WATER (OHW)
 - - - - - 560 - - - - - MAJOR CONTOUR
 - - - - - 562 - - - - - MINOR CONTOUR

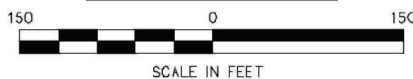
Huron, City of
LRB-2011-00033
Sheet 2 of 6



PERMIT DRAWINGS
NOT FOR CONSTRUCTION



EXISTING SITE PLAN



SHEET 2		OF 6	
JOB NO. 21245-1			
EXISTING SITE PLAN REHABILITATION OF THE FORMER CON-AGRA PROPERTY CITY OF HUNTER 4101 HUNTER HUNTER, OH 44839			
 KS ASSOCIATES 260 Burns Road, Suite 100 Lima, OH 44036 P 440-363-4730 F 440-363-4730 www.ksassociates.com		DATE: 2-29-2005 DRAWN BY: DME & JL CUB BY: BFC DME NAME: EXISTING PAT: _____ FILE: 30	
REVISIONS		DATE BY	
ADJACENT PROPERTY OWNERS		DATE BY	

NOTES

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A. FEDERAL NAVIGATION CHANNEL — MAY 1, 2024 BY THE U.S. ARMY CORPS OF ENGINEERS.
B. UPLAND — JUNE 5-13, 2020 BY THE U.S. ARMY CORPS OF ENGINEERS.
C. REMAINING SUBMERGED AREAS — NATIONAL OCEANOGRAPHIC AND ATMOSPHERIC ADMINISTRATION CHART 14843, APRIL 1, 2023 EDITION, <https://encdirect.noaa.gov/>.
5. DATE OF AERIAL PHOTOGRAPH: MARCH 28, 2023, <https://gis1.ohio.gov/geodata/download/>.
6. SEE EXISTING SITE PLAN FOR LINETYPE LEGEND.

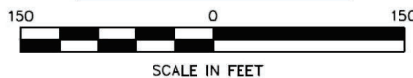
Huron, City of
LRB-2011-00033
Sheet 3 of 6



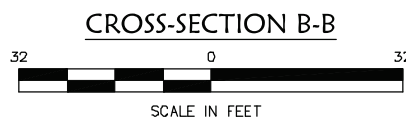
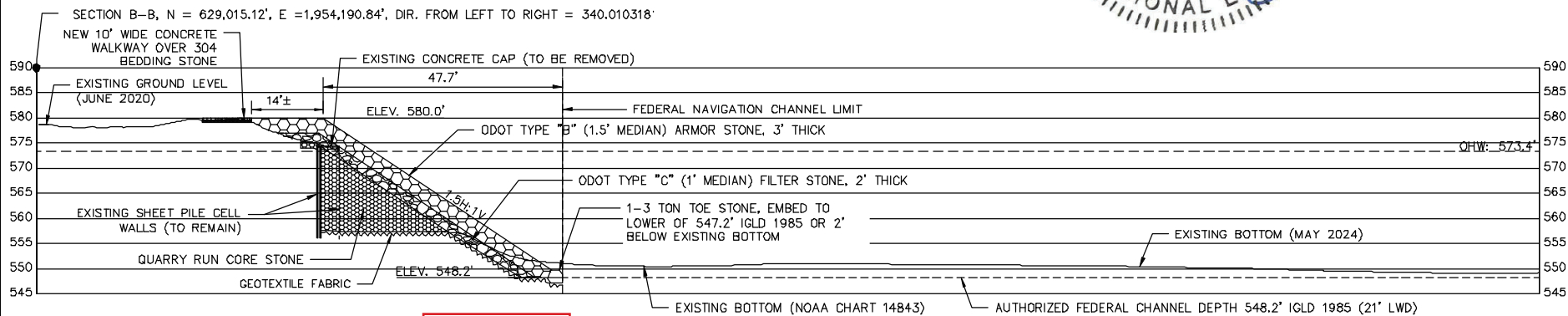
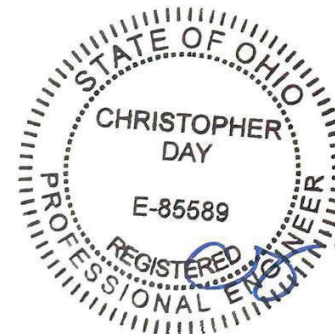
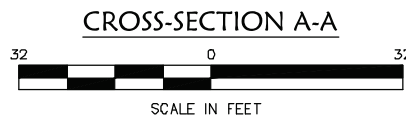
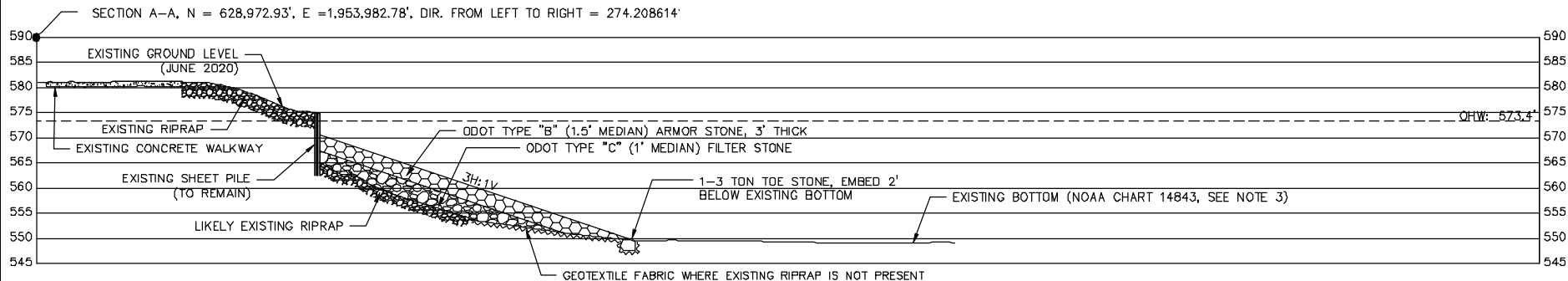
PERMIT DRAWINGS
NOT FOR CONSTRUCTION



PROPOSED SITE PLAN



DATE		BY		ADJACENT PROPERTY OWNERS	
DATE		BY		STATE OF OHIO DEPT. OF NATURAL RESOURCES	
DATE		BY		2045 MORSE ROAD, COLUMBUS, OH 43229	
DATE		BY		NORFOLK SOUTHERN CORP., TAXATION DEPT.	
DATE		BY		650 W. PEACHTREE ST. NW, ATLANTA, GA 30308	
DATE		BY		DATUM: 0.0 LWD = 560.2 FEET IGLD 1985	
REVISIONS					
DATE	DESCRIPTION	DATE	DESCRIPTION	DATE	DESCRIPTION
3-20-2025	DRW. BY: CME & DL	3-20-2025	CHK. BY: MFC	3-20-2025	DESIGNED BY: CME & DL
3-20-2025	DRW. NAME: CME & DL	3-20-2025	CHK. NAME: CME & DL	3-20-2025	DESIGNED NAME: CME & DL
3-20-2025	DRW. NAME: CME & DL	3-20-2025	CHK. NAME: CME & DL	3-20-2025	DESIGNED NAME: CME & DL
3-20-2025	DRW. NAME: CME & DL	3-20-2025	CHK. NAME: CME & DL	3-20-2025	DESIGNED NAME: CME & DL
KS ASSOCIATES, Inc. 260 Burns Road, Suite 100 Elvira, OH 44035 P 440 385 4780 F 440 365 4790 www.kssassociates.com					
PROPOSED SITE PLAN REHABILITATION OF THE FORMER CON-AGRA PROPERTY CITY OF HURON 41 CLEVELAND ROAD EAST HURON, OH 44839					
SHEET 3		OF 6		JOB NO. 21245-1	

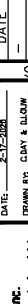


NOTES

1. VERTICAL DATUM IS IGLD 1985.
2. ALL SAND AND GRAVEL IN THE FOOTPRINT OF THE PROPOSED STRUCTURE SHALL BE SIDECAST LAKEWARD.
3. NO PORTION OF CROSS-SECTION A-A LIES WITHIN THE FEDERAL NAVIGATION CHANNEL.

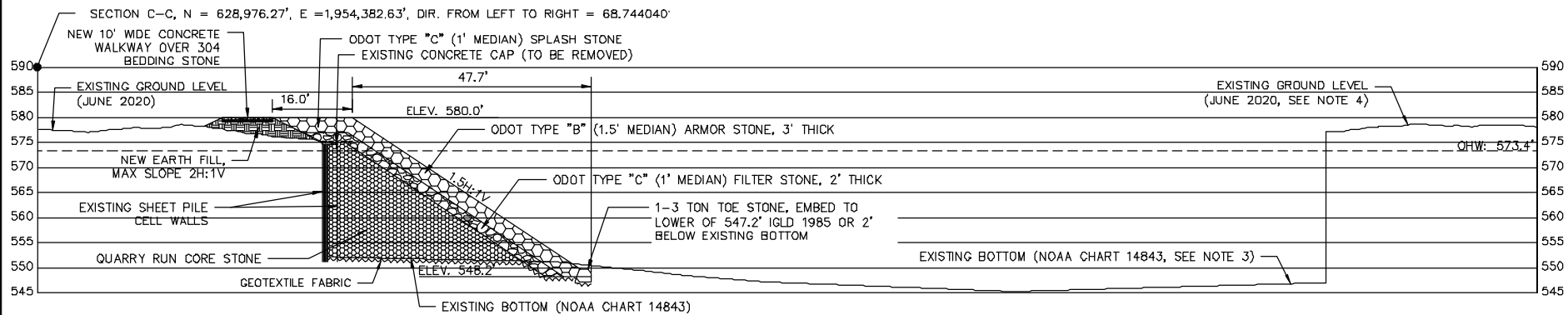
PERMIT DRAWINGS
NOT FOR CONSTRUCTION

Huron, City of
LRB-2011-00033
Sheet 4 of 6

CROSS-SECTIONS REHABILITATION OF THE FORMER CON-AGRA PROPERTY CITY OF HURON HURON, OH 44859		SHEET 4		OF 6		JOB NO. 21245-1	
 KS ASSOCIATES www.ksassociates.com				KS Associates, Inc. 2600 Burns Road, Suite 100 Elyria, OH 44035 P 440 368 4730 F 440 368 4790 www.ksassociates.com			
DATE: 2-17-2026		DRAWN BY: CLAY E. BLOOM		DATE: BY		ADJACENT PROPERTY OWNERS	
CHKD BY: M. COOPER		DWS. NAME: SECTION		REVISED		STATE OF OHIO DEPT. OF NATURAL RESOURCES 2045 MORSE ROAD, COLUMBUS, OH 43229 NORFOLK SOUTHERN CORP., TAXATION DEPT. 650 W. PEACHTREE ST. NW, ATLANTA, GA 30308 DATUM: 0.0 LWD = 569.2 FEET IGLD 1985	
PATH: CIVIL 30		F.I.L.		REVISED			

KS Associates, Inc.
2600 Burns Road, Suite 100
Elyria, OH 44035
P 440 386 4730
F 440 365 4790
www.kssociates.com

KS ASSOCIATES





US Army Corps
of Engineers®

PUBLIC NOTICE

Published: March 11, 2026

Buffalo, Huntington, Louisville and Pittsburgh Districts

**Announcing Reissuance of the Nationwide Permits (NWP),
Regional Conditions and Water Quality Certifications for the
State of Ohio**

REISSUANCE AND ISSUANCE OF NATIONWIDE PERMITS (NWPs): On January 8, 2026, the U.S. Army Corps of Engineers (Corps) published a final action in the Federal Register (91 FR 768) announcing the reissuance and issuance of 56 existing nationwide permits (NWPs) and one new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 57 NWPs will go into effect on March 15, 2026, and expire on March 15, 2031. One NWP was not reissued.

The January 8, 2026, *Federal Register* notice is available for viewing at:
<https://www.federalregister.gov/documents/2026/01/08/2026-00121/reissuance-and-modification-of-nationwide-permits>

The 56 existing NWPs published in the January 8, 2026 final action replace the 2021 versions of these NWPs. The 2021 versions of these NWPs expire on March 14, 2026. Pursuant to 33 CFR § 330.6(b), activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR § 330.4(e) and 33 CFR § 330.5 (c) or (d).

An integral part of the Corps' Regulatory Program is the concept of NWPs authorizing regulated activities that result in no more than minimal individual and cumulative adverse environmental effects. NWPs are activity specific and are designed to relieve some of the administrative burdens associated with Section 10 of the Rivers and Harbors Act (Section 10) and/or Section 404 of the Clean Water Act (Section 404) permit processing for both the applicant and the federal government. The NWPs are issued by the Chief of Engineers and are intended to apply throughout the entire U.S. and its territories.

REGIONAL CONDITIONS: The Great Lakes and Ohio River Division (LRD) has approved the regional conditions for the 2026 NWPs that are applicable in the State of Ohio. For convenience, all 2026 NWPs with the appropriate regional, general, and special conditions are attached. In addition to imposing regional conditions on certain

NWPs, LRD has revoked NWP 8 (Oil and Gas Structures on the Outer Continental Shelf) and NWP 55 (Seaweed Mariculture Activities) in the State of Ohio.

Some regulated activities authorized by a NWP may proceed without notifying the Districts, as long as those regulated activities comply with all applicable terms and conditions of the NWPs, including regional conditions imposed by the Division Engineer. A non-reporting NWP may become a reporting NWP (requires the submittal of a Pre-Construction Notification [PCN] to the Districts in accordance with NWP General Condition 32) if the activity has the potential to affect a historic property (See NWP General Condition 20 and Regional General Conditions 5e, 5f, and 6b), federally-listed endangered or threatened species or their habitat (See NWP General Condition 18 and Regional General Condition 5a and 6a), waters of special concern (Regional General Conditions 4 and 5), or National Wild and Scenic Rivers (See NWP General Condition 16 and Regional General Condition 6c).

Many of the proposed NWPs require advance notification (i.e. PCN) to the District Engineer before commencing regulated activities, to ensure that the regulated activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects. The PCN must be made in writing as early as possible prior to commencing the proposed regulated activity. The notification procedures are described in NWP General Condition 32 and Regional General Condition 6. The District Engineer may require a Section 10 and/or Section 404 Individual Permit for any regulated activity determined to have more than minimal adverse environmental effects, individually or cumulatively, on the aquatic environment or that would be contrary to the public interest (33 CFR § 320.4). More information about the Corps' Regulatory Program, including a fillable copy of the PCN form, is available at the following website: <https://www.lrd.usace.army.mil/Missions/Regulatory/Ohio/>.

To submit a PCN online, visit: <https://rrs.usace.army.mil/rrs>.

SECTION 401 CLEAN WATER ACT WATER QUALITY CERTIFICATION: The NWPs are not valid until the appropriate state agency certifies the discharge of dredged or fill material into waters of the U.S. does not violate state water quality standards or waives certification pursuant to 40 CFR § 121.9. On December 16, 2025, the Ohio Environmental Protection Agency granted a general Section 401 Water Quality Certification (WQC), subject to standard conditions (attached), for the NWPs. Nationwide Permits 1, 2, 8, 9, 10, 11, 24, and 28 have no Ohio Section 401 Water Quality Certification Special Conditions. An individual 401 WQC will be required for any NWP activity that does not meet the conditions of the general WQC standard conditions and, if applicable, any Section 401 WQC Special Condition(s) for the specific NWP. The Ohio Environmental Protection Agency denied Section 401 WQC for the following activities, and in accordance with the Corps' regulations at 33 CFR § 330.4(c), the Districts will not issue any authorization for the below activities until the Ohio Environmental Protection Agency issues an individual Section 401 WQC for the specific activity:

NWP 16 – Return Water From Upland Contained Disposal Areas;
NWP 46 – Discharges in Ditches; and
NWP 48 – Commercial Shellfish Maricultural Activities.

Applicants must review the Section 401 WQC standard and NWP-specific special conditions and submit to the Ohio Environmental Protection Agency, at the business center link at <https://ebiz.epa.ohio.gov/>, a request for an individual Section 401 WQC in accordance with 40 CFR § 121.5 (Request for certification) and any applicable state requirements (Ohio Revised Code Section 6111.30) when an individual Section 401 WQC is required as indicated above. An individual 401 WQC will also be required for any NWP activity that does not meet the conditions of the general WQC.

The Ohio Environmental Protection Agency may grant coverage under the general 401 WQC for the NWPs for any project that does not meet one or more of the terms and conditions of the issued general 401 WQC or where the district engineer has been granted authority to waive certain requirements. Details on the Director's Authorization process are outlined in the general 401 WQC for the NWPs under General Limitation and Condition D. 1. Additional information may be found at the following link: <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/water-quality-certification-and-isolated-wetland-permits#WaterQualityCertifications>

COASTAL ZONE MANAGEMENT ACT (CZMA) FEDERAL CONSISTENCY REVIEW:

Any state with a federally-approved CZMA plan must agree with the Corps' determination that the activities authorized by NWPs which are within, or will affect any land or water uses or natural resources of the state's coastal zone, are consistent with the CZMA plan. The Ohio Department of Natural Resources concurred with the Corps Federal Consistency Determination on all NWPs, except for NWPs 3, 7, 12, 13, 14, 15, 17, 18, 27, 36, 54 and 60 for activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay. Such activities would likely require review under one (1) or more authorizations referenced in the enforceable policies of the Ohio Coastal Management Program. Activities which are NOT included in the Ohio Department of Natural Resources' concurrence of the NWPs must obtain a project specific CZMA consistency determination from the:

Ohio Department of Natural Resources Office of Coastal Management
2514 Cleveland Road East
Huron, Ohio 44839
(419) 626-7980
coastal@dnr.ohio.gov

Information pertaining to the Ohio Department of Natural Resources Coastal Management Program, including the Federal Consistency form, can be obtained at the following link: <https://ohiodnr.gov/discover-and-learn/safety-conservation/about-odnr/coastal-management>.

FOR ADDITIONAL INFORMATION: The NWP's provide a simplified, expeditious means of project authorization under the various authorities of the Corps. We encourage prospective permit applicants to consider the advantages of NWP authorization during the preliminary design of their projects and request pre-application consultation with the respective Corps' district. **In order to most efficiently process requests, it is recommended you submit any NWP PCN or NWP verification request through the Regulatory Request System (RRS) at <https://rrs.usace.army.mil/rrs>.** Assistance and further information regarding all aspects of the Corps' regulatory program may be obtained by contacting:

United States Army Corps of Engineers, Buffalo District
ATTN: Regulatory Branch
478 Main Street
Buffalo, New York 14202
LRB.Ohio.RegActions@usace.army.mil

United States Army Corps of Engineers, Huntington District
ATTN: Regulatory Division
502 Eighth Street
Huntington, West Virginia 25701-2070
LRH.permits@usace.army.mil

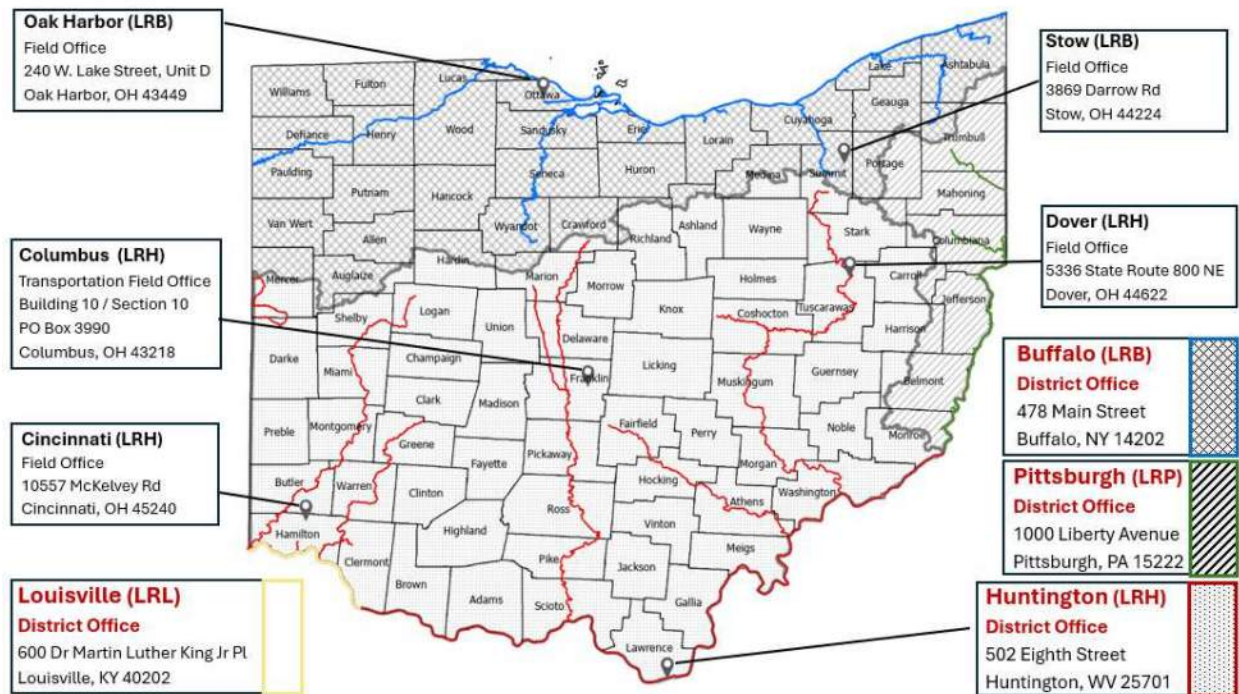
United States Army Corps of Engineers, Louisville District
ATTN: CELRL-RD, Room 752
600 Dr. Martin Luther King Jr. Place
Louisville, Kentucky 40202-0059
CELRL.Door.To.The.Corps@usace.army.mil

United States Army Corps of Engineers, Pittsburgh District
William S. Moorhead Federal Building
1000 Liberty Avenue
Regulatory Division, Ste. 2200
Pittsburgh, Pennsylvania 15222-4186
Regulatory.Permits@usace.army.mil

The Buffalo, Huntington, Louisville and Pittsburgh Districts are not accepting comments on this announcement.

Interested parties can access the January 8, 2026, final action and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

Below is a map showing the district boundaries for the State of Ohio.



Navigable Limits of Major Section 10 Streams in Ohio (There are slackwaters of the Ohio River, Hocking River, and Little Hocking River, that are also subject to Section 10 of the Rivers and Harbors Act of 1899; Contact the proper District office for information.)

<u>District</u>	<u>Waterway</u>	<u>Mile Points</u>
Buffalo District	Portage River	12.0 miles
	Maumee River	To Ind. St. Line
	Sandusky River	96.0 miles
	Huron River	10.0 miles
	Cuyahoga River	41.1 miles
	Grand River	91.6 miles
Huntington District	Ohio River	below MP 127.2
	Scioto River	175.0 miles
	Olentangy River	74.3 miles
	Hocking River	79.0 miles
	Muskingum River	112.5 miles
	Walhonding River	8.8 miles
	Tuscarawas River	113.3 miles
	Great Miami River	117.0 miles
Pittsburgh District	Little Miami River	90.7 miles
	E. Fk. Little Miami River	6.4 miles
	Ohio River	below MP 40.0

<u>District</u>	<u>Waterway</u>	<u>Mile Points</u>
	Little Beaver Creek	15.7 miles
	Middle Fk. L. B. Creek	17.3 miles
	North Fk. L. B. Creek	14.3 miles
	Mahoning River	41.0 miles
Louisville District	Ohio River	below MP 438.0

Note: The Huntington District processes all NWP verification requests when the Ohio Department of Transportation is the applicant.

A. Special Notes

B. Nationwide Permits Regional General Conditions (Applies to All 2026 Nationwide Permits in Ohio)

1. Bogs and/or fens, Category 3 wetlands, or other rare Ohio wetlands (such as Hemlock Swamps)
2. Diversion of water from the Great Lakes
3. Littoral transport within Lake Erie
4. In-Water Work Exclusion Dates
5. Waters of Special Concern
6. Pre-Construction Notification (PCN)
7. Compensatory Mitigation
8. Invasive Species
9. Aquatic Life Movements

C. Nationwide Permits Terms and Specific Regional Conditions

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects

18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Ecosystem Restoration, Establishment and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage and Irrigation Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
60. Activities to Improve Passage of Fish and Other Aquatic Organisms

D. Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Birds and Bald and Golden Eagles
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

E. District Engineer's Decision

F. Further Information

G. General Limitations and Conditions for all Ohio Environmental Protection Agency 401 Certified Nationwide Permits

H. Definitions

Best management practices (BMPs)
Compensatory mitigation

Currently serviceable
Direct effects
Discharge
Ecological reference
Enhancement
Establishment (creation)
High Tide Line
Historic property
Independent utility
Indirect effects
Loss of waters of the United States
Nature-based solutions
Navigable waters
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Shellfish seeding
Single and complete linear project
Single and complete non-linear project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Tribal lands
Tribal rights
Vegetated shallows
Waterbody

A. Special Note:

Note 1: For NWP's that do not require Pre-Construction Notification (PCN) to the Corps, it is an applicant's responsibility to review the Section 401 Clean Water Act Water Quality Certification (401 WQC) general and NWP-specific terms and conditions and submit information to the Ohio Environmental Protection Agency as

required by their 401 WQC. A project that meets the terms and conditions of a NWP with no PCN to the Corps is only valid when accompanied by a blanket or individual 401 WQC from the Ohio Environmental Protection Agency. No regulated work in waters of the United States may commence until the required 401 WQC (or waiver) has been obtained from the Ohio Environmental Protection Agency.

Note 2: It is strongly encouraged that non-Federal applicants use Information for Planning and Consultation (IPaC) to obtain a species list, when practicable, and submit this list with any required Pre-Construction Notification.

Note 3: Helpful information is enclosed at the end of the package to assist with compliance with the terms and conditions of the NWPs.

Note 4: The Corps continues to encourage the public to use the Regulatory Request System (RRS) for an improved permitting experience.”

Nationwide Permits Regional General Conditions (Applies to All 2026 Nationwide Permits in Ohio)

1. **Bogs and/or fens, Category 3 wetlands, or other rare Ohio wetlands (such as Hemlock Swamps):** The NWPs do not authorize any regulated activity which negatively impacts the functions and services of jurisdictional bogs and/or fens, Category 3 wetlands, or other rare Ohio wetlands (such as Hemlock Swamps). Negative impacts include conversion of an area of the waters of the United States considered as a bog, fen, Category 3 wetland or other rare Ohio wetlands (A subset of Category 3 wetlands explicitly identified in OAC 3745-1-54(C)(3), such as bogs, fens, and Hemlock Swamps) as determined using the Ohio Environmental Protection Agency’s Ohio Rapid Assessment Method into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired, or the reach of such waters reduced. Impairment of flow or circulation occurs when a regulated discharge or activity causes any measurable change to the wetland’s natural hydrologic regime that undermines its ability to store, convey, or attenuate floodwaters, maintain seasonal hydroperiods (frequency and duration of inundation), exchange water laterally or vertically between surface and groundwater or sustain the slow, diffuse sheetflow patterns typical of bogs, fens, and other high-value wetlands. Common examples of impairment include but are not limited to placing fill or constructing berms that block lateral sheetflow and create ponding or dry pockets, undersized culverts or bridges that throttle wetland inflow/outflow, causing upstream pooling or downstream scouring, excavating drainage ditches that lower groundwater and shorten the wetland’s hydroperiod, and installing hard-lined channels that convert diffuse flow into a fast, concentrated conveyance, reducing residence time. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

2. **Lake Erie Diversion of Water:** NWP's shall not authorize any regulated activity in Lake Erie which would result in diversion of water from the Great Lakes.
3. **Lake Erie Littoral Transport:** NWP's shall not authorize any regulated activity which has an adverse impact on littoral transport within Lake Erie.
4. **In-Water Work Exclusion Dates:** To facilitate compliance with NWP General Condition 3, any work associated with a regulated activity under a NWP cannot take place during the restricted period of the following Ohio Department of Natural Resources, Division of Wildlife In-Water Work Restrictions, unless the applicant receives advanced written approval (a copy of which should be submitted with the application submittal) from the Ohio Department of Natural Resources, Division of Wildlife and receives written approval from the Corps:
 - a. Salmonid Locations Restriction Period: September 15 – June 30
 - b. Other Locations Restriction Period: March 15 – June 30

Note 1: This list of restriction locations can be found at https://dam.assets.ohio.gov/image/upload/ohiodnr.gov/documents/wildlife/general/IN-WATER_WORK_RESTRICTION_PERIODS_AND_LOCATIONS.pdf and is subject to change as determined by the Ohio Department of Natural Resources, Division of Wildlife.

Note 2: This condition does not apply to Ohio Department of Transportation projects that are covered under the "Memorandum of Agreement Between The Ohio Department of Transportation, The Ohio Department of Natural Resources, and The United States Fish and Wildlife Service For Interagency Coordination For Projects Which Require Consultation Under the Endangered Species Act, Impact State Listed Species, and/or Modify Jurisdictional Waters 2016 Agreement Number: 19394" or subsequent amendments to this Ohio Department of Transportation memorandum of agreement.

5. **Waters of Special Concern:** PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for regulated activities in the following jurisdictional resources:
 - a. **Critical Resource Waters:**
 - i. In Ohio, two (2) areas have been designated critical habitat for the piping plover (*Charadrius melodus*) and are defined as lands 0.62 mile inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately two (2) miles. Unit OH-2 extends from the eastern boundary line of Headland

Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile. For maps of the designated critical habitat, visit <https://www.govinfo.gov/content/pkg/FR-2001-05-07/pdf/01-11205.pdf>.

- ii. In Ohio three (3) areas have been designated critical habitat for the rabbitsfoot mussel (*Quadrula cylindrica cylindrica*). Unit RF26 includes 17.5 river kilometers (rkm) (10.9 river miles [rimi]) of the Walhonding River from the convergence of the Kokosing and Mohican Rivers downstream to Ohio Highway 60 near Warsaw, Coshocton County, Ohio. Unit RF27 includes 33.3 rkm (20.7 rmi) of Little Darby Creek from Ohio Highway 161 near Chuckery, Union County, Ohio, downstream to U.S. Highway 40 near West Jefferson, Madison County, Ohio. Unit RF29 includes 7.7 rkm (4.8 rmi) of Fish Creek from the Indiana and Ohio State line northwest of Edgerton, Ohio, downstream to its confluence with the St. Joseph's River north of Edgerton, Williams County, Ohio. For maps of the designated critical habitat, visit <https://www.govinfo.gov/content/pkg/FR-2001-05-07/pdf/01-11205.pdf>.
 - iii. Old Woman Creek National Estuarine Research Preserve. For information pertaining to this reserve, visit <https://ohiodnr.gov/go-and-do/plan-a-visit/find-a-property/old-woman-creek-nerr-state-nature-preserve>
 - iv. Round hickorynut (*Obovaria subrotunda*): Grand River Unit RH 2 consists of 92 river miles (148.2 km) of the Grand River in Ashtabula, Lake, and Trumbull Counties, Ohio, from the Trumbull/ Geauga County line south of Lake County, Ohio State Route 88, downstream to the mouth of the Grand River at its confluence with Lake Erie. For maps to the designated critical habitat, visit <https://www.govinfo.gov/content/pkg/FR-2001-05-07/pdf/01-11205.pdf>.
- b. **Oak Openings:** Wetland activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry and Fulton Counties. For a map of the Oak Openings Region, visit <https://www.google.com/maps/d/viewer?mid=1JADupaZXJzO6AUDvnUaV18GVjG7yfBim&usp=sharing>
- c. **Category 3 Wetlands:** As determined through use of the latest approved version of the Ohio Environmental Protection Agency's Ohio Rapid Assessment Method wetland evaluation form.
- d. **Ohio Stream Designations:** Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding State Waters as determined by the

Ohio Environmental Protection Agency except for NWP 1, 2, 3, 9, 10, 11, 27, 28, 32, and 35 or maintenance activities covered under NWP 7 and 12. The current list of these rivers and tributaries can be found on the Ohio Environmental Protection Agency web-site at: <https://epa.ohio.gov/divisions-and-offices/surface-water/regulations/effective-rules>. These designations can be found under the aquatic life use of the rivers and tributaries within its basin and under the "Anti-deg Rule #05."

- e. **Ohio and Erie Canal National Heritage Area:** The Ohio and Erie Canal National Heritage Area extends from Cleveland, Ohio to Dover, Ohio. For a map to the designated National Heritage Area, visit <https://www.ohioanderiecanalway.com/explore/americas-byway/>

Note 1: This condition does not apply to Ohio Department of Transportation projects that are covered under the "Programmatic Agreement (PA) Among The Federal Highway Administration, The Advisory Council On Historic Preservation, Ohio's State Historic Preservation Office, And The State of Ohio, Department of Transportation Regarding Implementation Of The Federal-Aid Highway Program In Ohio (Agreement No. 19319) executed on 8 November 2017 and amended on 11 July 2019" or subsequent amendments to this Ohio Department of Transportation memorandum of agreement.

- f. **Muskingum River Navigation Historic District:** The Muskingum River Navigation Historic District is a 6,004 acres (24.30 km²) historic district in Ohio's Coshocton, Morgan, Muskingum, and Washington counties, which was listed on the National Register of Historic Places in 2007. The listing includes 12 contributing buildings, 32 contributing structures, and a contributing site. The "Muskingum River lock system was designated the first Navigation Historic District in the United States by the National Park Service." The Muskingum River Navigation System was also designated as a National Historic Civil Engineering Landmark by the American Society of Civil Engineers in 2001. For a map to the designated historic district, visit <https://ohiodnr.gov/go-and-do/plan-a-visit/find-a-property/muskingum-river-state-park>

Note 1: This condition does not apply to Ohio Department of Transportation projects that are covered under the "Programmatic Agreement (PA) Among The Federal Highway Administration, The Advisory Council On Historic Preservation, Ohio's State Historic Preservation Office, And The State of Ohio, Department of Transportation Regarding Implementation Of The Federal-Aid Highway Program In Ohio (Agreement No. 19319) executed on 8 November 2017 and amended on 11 July 2019" or subsequent amendments to this Ohio Department of Transportation memorandum of agreement.

- 6. **Pre-Construction Notification (PCN):** In addition to the information required under NWP General Condition 32, the following information must be provided with the PCN:

- a. **Threatened and Endangered Species:** Consistent with NWP General Condition 18, information for federally listed or proposed threatened and endangered species must be provided in the PCN to determine the proposed activity's compliance with NWP General Condition 18 and to facilitate project-specific coordination with the United States Fish and Wildlife Service (USFWS). In addition to the information described in General Condition 18(c), PCNs submitted by non-Federal applicants must include any relevant information obtained from the USFWS. When practicable, the PCN should include a copy of the official species list obtained from the USFWS' Information for Planning and Consultation (IPaC) System at <https://ipac.ecosphere.fws.gov/>. Reference the "Helpful Information" for a list of activities that might affect federally listed species and other pertinent information.
- b. **Cultural Resources:** Consistent with NWP General Condition 20, historic properties information must be provided in the PCN if the proposed undertaking might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.
- c. **National Wild and Scenic Rivers:** Consistent with NWP General Condition 16, the applicant must submit a PCN to the Corps for proposed activities in the following waterways which are components of the National Wild and Scenic River System:

Big and Little Darby Creeks

- Big Darby Creek from Champaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River;
- Little Darby Creek from the Lafayette-Plain City Road bridge downstream to within 0.8 mile from the confluence with Big Darby Creek; and
- Total designation is approximately 82 miles.

Little Beaver Creek

- Little Beaver Creek main stem, from the confluence of West Fork with Middle Fork near Williamsport to mouth;
- North Fork from confluence of Brush Run and North Fork to confluence of North Fork with main stem at Fredericktown;
- Middle Fork from vicinity of Co. Rd. 901 (Elkton Road) bridge crossing to confluence of Middle Fork with West Fork near Williamsport;
- West Fork from vicinity of Co. Rd. 914 (Y-Camp Road) bridge crossing east to confluence of West Fork with Middle Fork near

- Williamsport; and
- Total designation is 33 miles.

Little Miami River

- Little Miami River - St. Rt. 72 at Clifton to the Ohio River;
- Caesar Creek - lower two (2) miles of Caesars Creek; and
- Total designation is 94 miles.

- d. **Temporary Fills or Structures:** For NWP verification requests that require PCN and include a request for authorization for temporary fills or structures, the PCN must specify how long the temporary fills or structures will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-construction contours and elevations. Native, non-invasive vegetation must be used.
- e. **Clean Water Act Section 401 Water Quality Certification:** When a project is not covered by a general 401 WQC and requires a PCN, documentation must be provided that a request for an individual 401 WQC or a Director's Authorization was submitted to the Ohio Environmental Protection Agency and this office concurrently, including the date of request. If a request for an individual 401 WQC has not been submitted, the applicant must identify the anticipated date of the individual 401 WQC request following the submittal of a pre-filing meeting request to the Ohio Environmental Protection Agency.
- f. **Another Lead Federal Agency:** For proposed activities where the Corps is not the lead federal agency and PCN is required, the applicant must provide the Corps with the appropriate documentation to demonstrate the lead federal agency's compliance with Section 106 of National Historic Preservation Act, and Section 7 of the Endangered Species Act.
- g. **Ohio Rapid Assessment Method (ORAM):** A ORAM verification is required from the Ohio Environmental Protection Agency for each proposed wetland impact of greater than 1/10-acre resulting from a discharge of dredged and/or fill material. The following information should be provided to the Ohio Environmental Protection Agency via their EBusiness center at <https://ebiz.epa.ohio.gov/> to expedite their review:
 - i. 10-page ORAM form;
 - ii. A minimum of four (4) high resolution color photographs taken while facing each of the four (4) cardinal directions of each wetland proposed for impact. Photographs must accurately depict the quality of the wetland and may not include a majority of dying or dead vegetation or excessive cover due to seasonal conditions that vegetation and substrates cannot be observed, such as leaf litter, snow, or ice. Photographs deemed to be insufficient of representing the wetland will

- be required to be retaken once seasonal conditions are appropriate. Photographs shall be clearly labeled with the wetland name, direction, and date;
- iii. United States Geological Survey topographical map, National Wetlands Inventory map, Soil Survey map and aerial images (both historical and current) which clearly outline the entire wetland boundary;
 - iv. A detailed description of how the project meets public need, as defined in Ohio Administrative Code 3745-1-50, for impacts to Category 3 wetlands;
 - v. Environmental Review letter from the Ohio Department of Natural Resources, with Ohio Natural Heritage Database (ONHD) results indicating known records (or lack thereof) of state listed threatened and/or endangered species. The Ohio Department of Natural Resources Environmental Review website can be found at <https://ohiodnr.gov/discover-and-learn/safety-conservation/about-ODNR/real-estate/environmental-review/> and contains instructions on submitting for Environmental Reviews. Requests for Environmental Reviews should be submitted to environmentalreviewrequest@dnr.ohio.gov;
 - vi. Copies of any correspondence submitted to and received from the Ohio Environmental Protection Agency should be included in the application package to facilitate the Corps' evaluation of the functions provided by the wetlands that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), and the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer; and
 - vii. If no response within 25 days from the Ohio Environmental Protection Agency, then the proponent can move forward with the provided their PCN with the relevant ORAM information that was provided to the Ohio Environmental Protection Agency).

7. Compensatory Mitigation:

- a. Regarding culvert replacements, the Corps will evaluate the existing culvert length and any new culvert length or associated rip rap/wing wall/structure separately. Direct culvert replacement will not require compensatory mitigation. An extension or additional loss of waters will be considered for compensatory mitigation requirements.
- b. The overlap of fill (where previous culverts existed) does not require compensatory mitigation.

- c. The installation of new or additional culvert(s) in a previously open channel will be evaluated for compensatory mitigation requirements.
 - d. As a general matter, compensatory mitigation will not be required for bank stabilization activities if those activities are expected to result in a net gain of functions and services due to reductions in bank erosion and sedimentation.
 - e. For wetland losses and permanent wetland conversions of 1/10-acre or less or stream losses of 3/100-acre or less associated with the discharge of dredged and/or fill material within the State of Ohio, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
 - f. Use of 'conversion' relates to the change of a scrub/shrub and forested wetlands to an herbaceous state or a forested wetland to a scrub/shrub state, but it would not result in a loss of waters of the United States since the wetland would continue to exist in the landscape.
8. **Invasive Species:** For regulated activities that include grading, no area for which grading has been completed will be unseeded or unmulched for longer than 14 days. All disturbed areas associated with the authorized activity will be seeded and/or revegetated with native species and seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of non-native invasive species.
9. **Aquatic Life Movements:** Consistent with NWP General Condition 2, culverts and other crossings of waterbodies shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms. When practicable, culverts shall be installed at the existing streambed slope, to allow for the natural movement of bedload and aquatic organisms. Where applicable and based on regional best practices, as recommended by the Ohio Environmental Protection Agency, bottomless or buried culverts are required when culvert size is greater than 48-inches in diameter. This condition does not apply if the culverts have a gradient of greater than 1% grade or installed on bedrock. A buried culvert means that the bottom 10% by dimension shall be buried below the existing stream bed elevation.

B. Nationwide Permit Terms and Specific Regional Conditions:

1. **Aids to Navigation.** The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Authority: Section 10 of the Rivers and Harbors Act of 1899 [Section 10]).
2. **Structures in Artificial Canals.** Structures constructed in artificial canals within

principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR § 322.5(g)). (Authority: Section 10).

3. Maintenance.

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR § 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities,

access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 and Section 404 of the Clean Water Act (Section 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Corps NWP 3 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for the following activities:
 - Any jurisdictional stream or ditch channel modification (reconfiguration or reconstruction of all or part of a channel, such as by straightening, relocating, lining, or excavating the channel, or by enclosing the channel within a structure such as a pipe or culvert) that exceeds a distance of 50 feet upstream and 50 feet downstream of the structure;
 - The placement of any new rip-rap below the ordinary high water mark when associated with an existing bridge or similar crossing exceeding a total of 200 feet extending in either direction from the crossing;
 - The replacement of any permanent vertical bulkhead greater than one (1) foot waterward of the original alignment. A vertical bulkhead is defined as any structure, or fill, with a vertical face. It may be constructed of timber, steel, concrete, etc.;
 - Regulated activities in Section 10 navigable waters that involve the discharge of greater than 25 cubic yards of dredged or fill material below the ordinary high water mark; and
 - All regulated activities in Section 10 navigable waters, and federal harbors in Lake Erie.
- For projects located along the shorelines of Lake Erie, Sandusky Bay, and

Maumee Bay, all sand and gravel located below the proposed project, both below and above ordinary high water mark (573.4 feet International Great Lakes Datum 1985), will be excavated down to clay or bedrock, and side cast into the nearshore area either immediately waterward or downdrift of the project area. It will be at the discretion of the district engineer to determine whether the material located below the authorized structure needs to be relocated, where it should be relocated to, and the appropriate authorization, if needed, for the relocation. Verification of the placement of the excavated material within the nearshore area shall be documented through the submittal of dated photographs and an accompanying photo location map to the district engineer within 30 days of commencement of the project.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for temporary or permanent impacts to category 3 wetlands that exceed 0.1 acres. Impacts to category 3 wetlands are only allowable for activities involving the repair, maintenance, replacement, or safety upgrades to existing infrastructure that meets the definition of public need. Ohio EPA will make the determination if a project meets public need during the ORAM verification process.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404).

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.

2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

5. **Scientific Measurement Devices.** Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge of dredged or fill material is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404).

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;

- c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

6. Survey Activities. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge of dredged or fill material does not exceed 1/10-acre in waters of the U.S. Discharges of dredged or fill material and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Authorities: Sections 10 and 404).

Corps NWP 6 Specific Regional Condition:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for the discharge of greater than 25 cubic yards of dredged or fill material into jurisdictional rivers, lakes, and tributaries.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

7. Outfall Structures and Associated Intake Structures. Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404).

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:

- a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

8. Oil and Gas Structures on the Outer Continental Shelf. Revoked in the State of Ohio.

9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose. (Authority: Section 10)

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

11. Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water-skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir managers must approve each buoy or marker individually. (Authority: Section 10)

12. Oil or Natural Gas Pipeline Activities. Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Oil or natural gas pipelines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground oil or natural gas pipelines: This NWP authorizes the construction or maintenance of foundations for aboveground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of

dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of

waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require preconstruction notification. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR § 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of General Condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see General Condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

Corps NWP 12 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for all permanent conversion of scrub/shrub and forested wetlands of greater than 1/10-acre per each single and complete project..
- If an inadvertent return of drilling mud occurs during a directional drilling activity and the clean-up of drilling mud includes a regulated discharge of dredged and/or fill material into waters of the United States and/or a regulated activity in a Section 10 navigable waterway, the permittee must notify the Corps within one (1) to two (2) days after the work has been conducted and provide a brief report that includes the location of the clean-up activity and a description of the clean-up measures implemented on-site.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Temporary or permanent impacts to category 3 wetlands are limited to less than 0.1 acres for activities involving the repair, maintenance, replacement, or safety upgrades to existing infrastructure that meets the definition of public need. Ohio EPA will make the determination if a project meets public need during the ORAM verification process.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

13. Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP authorizes discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States to incorporate nature-based solutions into new and existing bank stabilization activities to provide habitat and other ecosystem functions and services and to reduce adverse effects of bank stabilization activities on the aquatic environment. Examples of nature-based solutions for bank stabilization activities include the use of construction materials for

seawalls and bulkheads that have textured surfaces, crevices, shelves, benches, and pits that support attachment and growth of benthic organisms; the construction of rock pools next to the bank stabilization activity; the construction of small pocket beaches next to the bank stabilization activity; the use of various sizes of rock for revetments to provide different sizes of spaces between rocks for habitat for various species of organisms; the placement of rock clusters next to a seawall or bulkhead; the placement of large wood next to seawalls, bulkheads, and revetments; and the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

Note 2: Under 33 CFR § 320.4(g)(2), a landowner has the general right to protect his or her property from erosion, and the district engineer can provide general guidance to the landowner regarding possible alternative methods of protecting his or her property. Permittees are encouraged to use soft bank stabilization approaches (e.g., bioengineering, vegetative stabilization) at sites where those methods are likely to be effective in managing erosion, such as sites where shorelines and banks are subject to moderate to low erosive forces. However, hard bank stabilization activities (e.g., seawalls, bulkheads, revetments, riprap) may be necessary at sites where shorelines and banks are subject to strong erosive forces. An appropriate and effective approach to managing shoreline or bank erosion at a specific site requires consideration of a variety of factors, including but not limited to: bank height; bank condition; the energy of tides, waves, currents, or other water flows that the bank is exposed to; fetch; nearshore water depths; the potential for storm surges; sediment or substrate type; tidal range in

waters subject to the ebb and flow of tides; shoreline configuration and orientation; the width of the waterway; and whether there is infrastructure in the vicinity of the proposed bank stabilization activity that needs to be protected and the degree of protection needed.

Corps NWP 13 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for the following activities:
 - All regulated activities located between the upstream and the downstream arrival points of any Corps of Engineers lock and dam, or within 1,500 feet of any federal-mooring cell at any lock, as shown on the navigation charts or within 2,000 feet of designated arrival points (specific locations depicted on river navigation charts where boats/barges enter a lock) of locks and dams on the Ohio River.
 - All regulated activities in Lake Erie, Sandusky Bay, and Maumee Bay that involve the discharge of greater than 10 cubic yards of dredged or fill material below the ordinary high water mark; and
 - The use of any vertical bulkhead. A vertical bulkhead is defined as any structure, or fill, with a vertical face. It may be constructed of timber, steel, concrete, etc.
- For regulated projects located along the shorelines of Lake Erie, Sandusky Bay, and Maumee Bay, all sand and gravel located below the proposed project, both below and above ordinary high water mark (573.4 feet International Great Lakes Datum 1985), will be excavated down to clay or bedrock, and side cast into the nearshore area either immediately waterward or downdrift of the project area. Verification of the placement of the excavated material within the nearshore area shall be documented through the submittal of dated photographs and an accompanying photo location map to the district engineer within 30 days of commencement of the project.
- For regulated projects located along the shorelines of Lake Erie, Sandusky Bay, and Maumee Bay, a one-time sand prefill of two (2) cubic yards of sand per linear foot of shoreline stabilized shall be placed at an approved location in the nearshore area in less than three (3) feet of water within 30 days of project commencement, unless the district engineer waives this requirement by making a written determination. Verification of the placement of the sand prefill material within the nearshore area shall be documented through the submittal of contractor's receipts, including the volume of sand prefill, dated photographs, and accompanying photo location map to the district engineer. The sand shall be from an upland source or other approved source and shall be similar in composition to the sand at the project site, free from organic material; limestone sand and topsoil are excluded.
- For regulated bank stabilization projects located in Lake Erie, Sandusky Bay, and Maumee Bay, broken concrete shall not be used as suitable material, unless it is contained within a structure.

- Proper installation is required for use of this NWP and does not include material that is dumped from the top of bank resulting in uncontrolled spilling of material over the bank into the waterway.
- Soft bank stabilization techniques such as live stakes and brush mattresses are encouraged where practicable, alone or in combination with hard bank stabilization.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.
3. Bioengineering techniques shall be utilized, if practicable.
4. Material used for bank stabilization shall be free from toxic contaminants in other than trace quantities, free of exposed rebar, and free of asphalt, tires, and debris.
5. Material used for bank stabilization may consist of rock, stone, vegetative erosion control measures, broken concrete rubble, and clean soil.
6. Except for Lake Erie residential projects that have received shore structure permits by Ohio Division of Natural Resources Coastal Zone Management, vertical bulkheads shall not be placed more than one foot waterward of the intersection of the ordinary high water mark of the water body and the existing shoreline. Toe stone shall be placed at the base of the vertical bulkhead except in areas where the original shoreline is composed of bedrock and slopes are

predominantly greater than 75 percent or where the placement of toe stone will interfere with shipping activity. When required, toe stone shall be placed at an average rate of one-third the total height of the exposed face of the vertical bulkhead at a 2:1 slope.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

14. Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR § 330.6(d).

Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR § 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of General Condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see General Condition 23).

Corps NWP 14 Specific Regional Condition:

- PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for all regulated activities in Section 10 navigable waters, and federal harbors of Lake Erie.
- A PCN is required for the discharge of dredged and/or fill material that will result in the loss of 3/100 acre or greater of jurisdictional stream, unless the fill placement replaces an existing authorized fill with no net increase in stream bed impact. Applicants may provide documentation that demonstrates the stream segment is functionally degraded and that proposed activities would not result in additional adverse effects.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - b. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - c. state wild and scenic rivers when impacts exceed 100 linear feet;

- d. national wild and scenic rivers when impacts exceed 100 linear feet;
 - e. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - f. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - g. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. Individual 401 WQC is required for temporary or permanent impacts to category wetlands that exceed 0.1 acres. Impacts to category 3 wetlands are only allowable for activities involving the repair, maintenance, replacement, or safety upgrades to existing infrastructure that meets the definition of public need. Ohio EPA will make the determination if a project meets public need during the ORAM verification process.
 4. Individual 401 WQC is required for temporary or permanent impacts as a result of stream crossings that exceed a total of three per stream mile per stream.
 5. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under the General Bridge Act of 1946, Section 9 of the Rivers and Harbors Act of 1899, or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate Clean Water Act Section 404 permit. (Authority: Section 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.

2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

16. Return Water From Upland Contained Disposal Areas. Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR § 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the Clean Water Act Section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR § 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

Ohio 401 Certification Special Limitation and Condition:

Individual 401 WQC is required for the use of this nationwide permit.

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 10,000 kW of total generating capacity at

existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authority: Section 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged dredged or fill material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge of dredged or fill material will not cause the loss of more than 1/10-acre of waters of the United States; and
- (c) The discharge of dredged or fill material is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge of dredged or fill material or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge of dredged or fill material is in a special aquatic site, including wetlands. (See General Condition 32.) (Authorities: Sections 10 and 404)

Corps NWP 18 Specific Regional Conditions:

- For regulated shore structure or bank stabilization projects located along the shorelines of Lake Erie, Sandusky Bay, and Maumee Bay, that will result in the permanent hardening or filling of the existing shoreline all sand and gravel located below the proposed project, both below and above ordinary high water mark (573.4 feet International Great Lakes Datum 1985), will be excavated down to clay or bedrock, and side cast into the nearshore area either immediately waterward or downdrift of the project area. Verification of the placement of the excavated material within the nearshore area shall be documented through the submittal of dated photographs and an accompanying photo location map to the district engineer within 30 days of commencement of the project.
- A PCN is required for the discharge of dredged and/or fill material that will result in the loss of 3/100 acre or greater of jurisdictional stream.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acre;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.
3. Individual 401 WQC is required to authorize disposal of dredged material into Lake Erie where that is the primary project purpose.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

19. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR § 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (Authorities: Sections 10 and 404)

Corps NWP 19 Specific Regional Condition:

- Dredging operations in Lake Erie, Sandusky Bay, and Maumee Bay, that recover material consisting of greater than 60% sand and/or gravel, shall be disposed of in the nearshore area, in water with sufficient depth as determined by the district engineer, and downdrift from the dredging location.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

20. Response Operations for Oil or Hazardous Substances. Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part

761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

21. Surface Coal Mining Activities. Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

- (a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;
- (b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into tidal waters or non-tidal wetlands adjacent to tidal waters; and
- (c) The discharge is not associated with the construction of valley fills. A “valley fill” is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See General Condition 32.) (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

22. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special

aquatic site, including coral reefs and wetlands. (See General Condition 32.) If the vessel is listed or eligible for listing in the National Register of Historic Places, the permittee cannot commence the activity until informed by the district engineer that compliance with the “Historic Properties” general condition is completed. (Authorities: Sections 10 and 404)

Note 1: Intentional ocean disposal of vessels at sea requires a permit from the U.S. EPA under the Marine Protection, Research and Sanctuaries Act, which specifies that ocean disposal should only be pursued when land-based alternatives are not available. If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with General Condition 18, Endangered Species, and General Condition 20, Historic Properties, is required for all NWP. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant Section 106, 109, and 111(1) of the National Environmental Policy Act, that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency’s or department’s determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency’s categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer

prior to commencing the activity (see General Condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letter(s). (Authorities: Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any changes to approved categorical exclusions applicable to this NWP will be announced in Regulatory Guidance Letters and posted on this same web site.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for activities other than those described in 23 CFR Part 771.117 of the Federal Highway Administration regulations.
3. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acre;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 500 linear feet.

24. Indian Tribe or State Administered Section 404 Programs. Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own Clean Water Act Section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State Clean Water Act Section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR § 322.4(b)).

25. Structural Discharges. Discharges of dredged or fill material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

Corps NWP 25 Specific Regional Condition:

- PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for all discharges of dredged and/or fill material into Section 10 navigable waters.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acre;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;

- g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
- h. all other stream or lake shorelines when impacts exceed 500 linear feet.

26. [Reserved]

27. Aquatic Ecosystem Restoration, Establishment and Enhancement Activities.

Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal rivers and streams and their riparian areas, the restoration and enhancement of other non-tidal open waters, and the restoration or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic ecosystem functions and services.

To be authorized by this NWP, the aquatic ecosystem restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in an aquatic ecosystem that resembles an ecological reference (i.e., a natural ecosystem). An ecological reference may be based on the characteristics of aquatic ecosystems or riparian areas that currently exist in the region, or the characteristics of aquatic ecosystems or riparian area that existed in the region in the past. Ecological references include cultural ecosystems, which are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship for vegetation management). An ecological reference may also be based on regional ecological knowledge, including indigenous and local ecological knowledge, of the target aquatic ecosystem type or riparian area.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic ecosystem functions and services.

This NWP does not authorize: (1) dam removal activities; (2) stream channelization activities; and (3) the conversion of tidal wetlands to open water impoundments and other aquatic uses.

Only native plant species should be planted at the site.

Compensatory mitigation is not required for activities authorized by this NWP because these activities must result in net increases in aquatic ecosystem functions and services.

Reversion. For aquatic ecosystem restoration, enhancement, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the

Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge of dredged or fill material occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory Program requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic ecosystem functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: The permittee must submit a report containing information on the proposed aquatic ecosystem restoration, enhancement, and establishment activity to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP. The report must include the following information:

- (1) Name, address, and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;

(3) Information on baseline ecological conditions at the project site, including a general description and map of aquatic and terrestrial habitat types on that site. The map of existing aquatic and terrestrial habitat types and their approximate boundaries on the project site should be based on recent aerial imagery or similar information, and verified with photo points or other field-based data points for each mapped habitat type;

(4) A sketch of the proposed project elements of the NWP 27 activity drawn over a copy of the map of existing aquatic and terrestrial habitat types on the project site;

(5) A description of the techniques or mechanisms that are proposed to be used to increase aquatic ecosystem functions and services on the project site, and if applicable;

(6) A copy of: (a) the binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement with the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or their designated state cooperating agencies; (b) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (c) the SMCRA permit issued by OSMRE or the applicable state agency.

(Authorities: Sections 10 and 404)

Note 1: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Note 2: If an activity authorized by this NWP requires a PCN because of an NWP general condition (e.g., NWP general condition 18, endangered species) or a regional condition imposed by a division engineer, the information required by paragraph (3) of the Reporting requirement substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for projects where the primary purpose of the project is not the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters.
3. Individual 401 WQC is required for projects that result in the conversion of a stream or wetland to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or upland unless associated with the

construction of a mitigation bank or in lieu fee project approved by the Interagency Review Team (IRT).

4. Bank stabilization activities authorized under this nationwide permit must utilize bioengineering techniques.
5. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters unless associated with the construction of a mitigation bank or in-lieu fee project approved by the IRT which addresses the impact:
 - a. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 500 linear feet;
 - b. state wild and scenic rivers when impacts exceed 500 linear feet;
 - c. national wild and scenic rivers when impacts exceed 500 linear feet;
 - d. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 500 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNr; and
 - e. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 500 linear feet.
6. Individual 401 WQC is required for impacts to more than 0.50 acres of category 2 forested wetlands unless associated with the construction of a mitigation bank or in lieu fee project approved by the Interagency Review Team (IRT) which addresses the impact.
7. Individual 401 WQC is required for temporary and permanent impacts to category 3 wetlands greater than 0.1 acres except for impacts to Lake Erie coastal wetlands¹, which are category 3 wetlands for the following reasons:
 - a. the wetland scores less than 60 on the Quantitative Rating of the ORAM, is "hydrologically unrestricted" and contains a predominance of native species within vegetation communities (i.e., they are category 3 wetlands using the Narrative Rating of ORAM), but the wetland has been drained, farmed, or degraded and is unvegetated or sparsely vegetated with wetland annuals or is vegetated with one or several of the following species: *Butomus umbellatus*, *Lythrum salicaria*, *Myriophyllum spicatum*, *Najas minor*, *Phalaris arundinacea*, *Phragmites australis*, *Potamogeton crispus*, and/or *Typha angustifolia*; or
 - b. the wetland is diked and managed ("hydrologically restricted"), scores less than 60 on the Quantitative Rating of ORAM, is a category 3 wetland using the Narrative Rating of ORAM because of the presence of state or

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federally threatened or endangered species, and/or because of the documented presence of significant breeding or non-breeding bird concentration areas, and the proposed activities will not destroy, jeopardize or adversely affect, either directly or indirectly, the continued existence of the threatened or endangered species.

8. Impacts to Lake Erie coastal wetlands described above that are authorized under this 401 WQC are as follows (any other impacts to category 3 wetlands, except those described below, that occur at Lake Erie coastal wetlands require an individual 401 WQC):
 - a. Tile alteration. Removing, altering, disabling drain tile or replacing perforated drain tile with non-perforated drain tile.
 - b. De-leveling. Re-grading for the purposes of microtopography to enhance hydrologic diversity, including the creation of shallow scrapes, channels, submerged islands and interconnected areas of deeper water is authorized. Final grade of any excavation, following topsoil replacement if applicable, shall not exceed 60-cm (approximately two feet). Replacement of the original excavated topsoil is required for all de-leveling activities except when the seed bank is dominated by invasive vegetation. In these cases, the area must be seeded by using a seed mix of native Ohio vegetation indigenous to the area/region where the project is located and appropriate for the hydrological regime present in the area. Excess spoils that are not able to be incorporated into the re-grading activities shall be deposited in adjacent non-wetland areas, used in other restoration activities listed in this paragraph or trucked to an upland area off-site.
 - c. Ditch plugs and ditch fills. Ditch plugs and water control structures: Disabling surface drains by filling lengths, provided that the surface drains originate on the property of the project sponsors and have no base flow or installing water control structures (e.g., riser structures, flap gates, fixed weirs, trickle tubes). Ditch plugs may include an emergency spillway to safely route flows back into the ditch below the plug.
 - d. Earthen embankments. Earthen fill structures that do not exceed 1.8 m (six feet) in height with side slopes of 3:1 or greater with less than 50 acre-feet of storage. The embankments may include rock or vegetated overflow structures to pass base-flow as needed.
 - e. Interior dikes. Earthen fill structures constructed within the interior of an existing diked and managed wetland for the purpose of improving management of hydrology in the diked wetland in order to facilitate control of invasive plant species, exclude or control invasive animal species, improve habitat features, etc.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including

Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

28. Modifications of Existing Marinas. Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Authority: Section 10)

29. Residential Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100

- linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
- g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

30. Moist Soil Management for Wildlife. Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR § 323.4).

Corps NWP 30 Specific Regional Condition:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for use of this NWP unless the applicant is working under the leadership of a governmental wildlife resource agency such as the Natural Resource Conservation Service, the U.S. Fish and Wildlife Service (USFWS), or the Ohio Department of Natural Resources (ODNR).

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:

- a. category 3 wetlands;
- b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
- c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
- d. state wild and scenic rivers when impacts exceed 100 linear feet;
- e. national wild and scenic rivers when impacts exceed 100 linear feet;
- f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
- g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 300 linear feet; and
- h. all other stream or lake shorelines when impacts exceed 500 linear feet.

31. Maintenance of Existing Flood Control Facilities. Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, or 33 CFR § 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design

capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR § 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see General Condition 32). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the disposal site for dredged or excavated material. (Authorities: Sections 10 and 404)

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect, the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for any projects not constructed by the Corps and maintained by the Corps or not transferred by the Corps to a local sponsor.

32. Completed Enforcement Actions. Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR § 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for the use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters, unless Ohio EPA has been informed, in writing, of each specific project that exceeds these criteria and based on this information has not chosen to issue a State Administrative Order or Consent Order resulting from a State enforcement action:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts that exceed 3.0 acres; and
 - c. stream impacts greater than 500 linear feet.

33. Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges of

dredged or fill material, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see General Condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)

Corps NWP 33 Specific Regional Condition:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required if the regulated activity will occur in a perennial stream and the temporary construction, access, and/or dewatering activity is expected to take more than one (1) year to complete. The submission of this PCN will allow the Corps to consider any temporal effects of the regulated activity.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;

- f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. Individual 401 WQC is required for the construction, maintenance, or modification of marina basins;
 4. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See General Condition 32.) (Authority: Section 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

35. Maintenance Dredging of Existing Basins. The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that

has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

Corps NWP 35 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for use of this NWP.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.
3. Individual 401 WQC is required for temporary or permanent impacts to category 1 and category 2 wetlands that exceed 0.50 acres.

36. Boat Ramps. Activities required for the construction, repair, or replacement of boat ramps, provided the activity meets all of the following criteria:

- (a) The discharge of dredged or fill material into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;
- (b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;
- (c) The base material is crushed stone, gravel or other suitable material;
- (d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,
- (e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge of dredged or fill material into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See General Condition 32.) (Authorities: Sections 10 and 404)

Corps NWP 36 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for discharges of dredged or fill material into Section 10 waterways surrounding islands (, island backchannels (a channel located between an island and the mainland), embayments (indentation off of a Section 10 navigable water that forms a bay), and/or project located at the confluence of one (1) tributary with another.
- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for any proposed boat ramp located between the upstream and downstream arrival points of any U.S. Army Corps of Engineers lock and dam, or within 1,500 feet of any emergency-mooring cell at any lock, as shown on the navigation charts or within 2,000 feet of designated arrival points (specific locations depicted on river navigation charts where boats/barges enter a lock) of locks and dams on the Ohio River.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 20 linear feet;
 - d. state wild and scenic rivers when impacts exceed 20 linear feet;
 - e. national wild and scenic rivers when impacts exceed 20 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 20 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 20 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 50 linear feet.

3. Individual 401 WQC is required for boat ramps where dredging is required to establish and maintain water depths necessary for boat launching.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);
- (c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
- (d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or
- (e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR § 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a

pre-construction notification to the district engineer prior to commencing the activity (see General Condition 32). (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations,

government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.
40. **Agricultural Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads

for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities. This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds. This NWP also authorizes discharges of dredged or fill material into non-tidal jurisdictional waters of the United States to relocate existing serviceable drainage ditches constructed in nontidal streams. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authority: Section 404)

Note: Some discharges of dredged or fill material into waters of the United States for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR § 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and

- h. all other stream or lake shorelines when impacts exceed 300 linear feet.
- 3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.
- 4. This certification shall be used only once per farm. For the purposes of this condition, farm shall be defined to include all individual farm tracts, whether or not such tracts are contiguous, that are owned by the applicant.
- 5. This certification does not authorize the construction of farm ponds in streams or wetlands (i.e., non-tidal waters of the United States).

41. Reshaping Existing Drainage and Irrigation Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage and irrigation ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage or irrigation ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the drainage ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the drainage ditch as originally constructed (i.e., the capacity of the drainage ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage or irrigation ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage or irrigation ditch must be approximately the same as the location of the centerline of the original drainage or irrigation ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

Ohio 401 Certification Special Limitations and Conditions:

- 1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
- 2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;

- d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. Individual 401 WQC is required for impacts that are not to existing maintained and channelized water conveyances that have been created or previously modified and maintained for the purpose of draining coal mines or abutting existing agricultural land or existing roadways and don't meet the following criteria:
- a. the ditch was man-made and is existing; or
 - b. the stream/ditch has existing entrenchment ratios that are less than 1.4 and the proposed dredging impacts do not reduce the sinuosity of the stream/ditch channel.
4. Prior to the commencement of the project, all drainage ditch reshaping projects must be approved in writing by either the Natural Resources Conservation Service or Soil and Water Conservation District or County Engineer in the county where the project occurs, or by a certified professional engineer, that the project complies with the above criteria. In order to be authorized under this paragraph, such certification shall be maintained by the person or entity engaged in the project and a copy shall be sent to Ohio EPA via email at: EPA.401Webmail@epa.ohio.gov.

42. Recreational Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authority: Section 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. Examples of such nature-based solutions include, but are not limited to, stream biofilters, bioretention ponds or swales, rain gardens, vegetated filter strips, vegetated swales (bioswales), constructed wetlands, infiltration trenches, and regenerative stormwater conveyances, as well as other nature-based solutions and other features that are conducted to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, and nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. The maintenance of stormwater management facilities and nature-based solutions that do not contain waters of the United States does not require a section 404 permit. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities or nature-based solutions, or the expansion of existing stormwater management facilities or nature-based solutions, the permittee must submit a preconstruction notification to the district engineer prior to commencing the activity. (See General Condition 32.)

Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or nature-based solution. (Authority: Section 404)

Corps NWP 43 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for use of the NWP.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100

- linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, an individual 401 WQC is required for any culvert extension that exceeds 300 linear feet.

44. Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

- (a) For mining activities involving discharges of dredged or fill material into non-tidal jurisdictional wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal jurisdictional wetlands;
- (b) For mining activities involving discharges of dredged or fill material in non-tidal jurisdictional open waters (e.g., rivers, streams, lakes, and ponds) or work in non-tidal navigable waters of the United States (i.e., section 10 waters), the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and
- (c) The acreage loss under paragraph(a) plus the acreage impact under paragraph (b) does not exceed 1/2-acre.

This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

- 1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
- 2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

45. Repair of Uplands Damaged by Discrete Events. This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged

by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see General Condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authorities: Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a Clean Water Act Section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR § 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

46. Discharges in Ditches. Discharges of dredged or fill material into non-tidal ditches that are (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge of dredged or fill material must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authority: Section 404)

Ohio 401 Certification Special Limitation and Condition:

Individual 401 WQC is required for the use of this nationwide permit.

47. [Reserved]

48. Commercial Shellfish Mariculture Activities. Structures or work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States necessary for new and continuing commercial shellfish mariculture operations (i.e., the cultivation of bivalve mollusks such as oysters, mussels, clams, and scallops) in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish mariculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. This NWP does not authorize structures or work in navigable waters of the United States or discharges of dredged or fill material into waters of the United States within Washington State.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
- (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or
- (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste.

Notification: The permittee must submit a pre-construction notification to the district engineer if the activity directly affects more than 1/2-acre of submerged aquatic vegetation. If the operator will be conducting commercial shellfish mariculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are proposed in navigable waters of the United States, project proponents should provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines “aquatic nuisance species” as “a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.”

Note 4: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Ohio 401 Certification Special Limitation and Condition:

Individual 401 WQC is required for the use of this nationwide permit.

49. Coal Remining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or

Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

Corps NWP 49 Specific Regional Condition:

- The PCN shall include the information required in the ODNR Division of Mineral Resource Management Policy Procedure Directive Regulatory 99-1 entitled Lands Eligible for Remining and dated November 18, 1999 or subsequent document.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands
3. Impacts to previously-mined stream reaches (ephemeral, intermittent, or perennial) as a result of re-mining and subsequent reclamation will require no further mitigation under this 401 WQC.

50. Underground Coal Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See General Condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

51. Land-Based Renewable Energy Generation Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the landbased renewable energy generation facility. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the discharge results in the loss of greater than 1/10-acre of waters of the United States. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: Electric utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove electric utility lines and/or road crossings, then NWP 57 and/or NWP 14 shall be used if those activities meet the terms

and conditions of NWP 57 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

52. Water-Based Renewable Energy Generation Pilot Projects. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term “pilot project” means an experimental project where the waterbased renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site. The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR § 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre limit. For each single and complete project, no more than 10 generation units (e.g., wind turbines, wave energy devices, or hydrokinetic devices) are authorized.

For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed 1/2- acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR § 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33

CFR § 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: Electric utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate review and/or approval from the Corps under 33 U.S.C. 408.

Note 3: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 4: Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

Note 5: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 6: Where structures or work are proposed in navigable waters of the United States, project proponents should provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

53. Removal of Low-Head Dams. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low-head dams.

For the purposes of this NWP, the term “low-head dam” is generally defined as a dam or weir built across a stream to pass flows from upstream overall, or nearly all, of the width of the dam crest and does not have a separate spillway or spillway gates, but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment. A low-head dam may have been built for a range of purposes (e.g., check dam, mill dam, irrigation, water supply, recreation, hydroelectric, or cooling pond), but in all cases, it provides little or no storage function.

The removed low-head dam structure must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure that the authorized activity results in no more than minimal adverse environmental effects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Nationwide permit 27 or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

54. **Living Shorelines**. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, which includes the Great Lakes, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural “soft” elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures, but a portion of a living shoreline may consist of an unvegetated cobble, gravel, and/or sand beach, (i.e., a pocket beach). The following conditions must be met:

(a) The structures and fill area, including cobble, gravel, and/or sand fills, sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a

manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;

(d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity and elevation, must be used if the site is planted by the permittee;

(e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;

(f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;

(g) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and

(h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing cobble, gravel, and/or sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.

This NWP does not authorize beach nourishment or land reclamation activities.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See General Condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b)(4) of General Condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions. (Authorities: Sections 10 and 404)

Note: In waters outside of coastal waters, nature-based bank stabilization techniques, such as bioengineering and vegetative stabilization, may be authorized by NWP 13.

Corps NWP 54 Specific Regional Conditions:

- For regulated projects located along the shorelines of Lake Erie, Sandusky Bay, and Maumee Bay, all sand and gravel located below the proposed project, both below and above ordinary high water mark (573.4 feet International Great Lakes Datum 1985), will be excavated down to clay or bedrock, and side cast into the nearshore area either immediately waterward or downdrift of the project area.

Verification of the placement of the excavated material within the nearshore area shall be documented through the submittal of dated photographs and an accompanying photo location map to the district engineer within 30 days of commencement of the project.

- For regulated projects located along the shorelines of Lake Erie, Sandusky Bay, and Maumee Bay, a one-time sand prefill of two (2) cubic yards of sand per linear foot of shoreline stabilized shall be placed at an approved location in the nearshore area in less than three (3) feet of water within 30 days of project commencement, unless the district engineer waives this requirement by making a written determination. Verification of the placement of the sand prefill material within the nearshore area shall be documented through the submittal of contractor's receipts, including the volume of sand prefill, dated photographs, and accompanying photo location map to the district engineer. The sand shall be from an upland source or other approved source and shall be similar in composition to the sand at the project site, free from organic material; limestone sand and topsoil are excluded.
- For regulated projects located in Lake Erie, Sandusky Bay, and Maumee Bay, broken concrete shall not be used as suitable material, unless it is contained within a structure.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. all stream or lake shorelines when impacts exceed 500 linear feet; and
 - c. structures and fill areas extending into Lake Erie more than 30 feet from the ordinary high water mark.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

55. Seaweed Mariculture Activities. Revoked in the State of Ohio.

56. [Reserved]

57. Electric Utility Line and Telecommunications Activities. Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in preconstruction contours of waters of the United States. An “electric utility line and telecommunication line” is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the electric utility line or telecommunication line crossing of each waterbody.

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines,

including overhead lines and substations, in nontidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of

waters of the United States. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Electric utility line and telecommunications activities must comply with 33 CFR § 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR § 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP.

Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require preconstruction notification (see paragraph (b)(4) of General Condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure

that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see General Condition 23).

Note 8: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

Corps NWP 57 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for all permanent conversion of scrub/shrub and forested wetlands of greater than 1/10-acre per each single and complete project.
- If an inadvertent return of drilling mud occurs during a directional drilling activity and the clean-up of drilling mud includes a regulated discharge of dredged and/or fill material into waters of the United States and/or a regulated activity in a Section 10 navigable waterway, the permittee must notify the Corps within one (1) to two (2) days after the work has been conducted and provide a brief report that includes the location of the clean-up activity and a description of the clean-up measures implemented on-site.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Temporary or permanent impacts to category 3 wetlands are limited to less than 0.1 acres for activities involving the repair, maintenance, replacement, or safety upgrades to existing infrastructure that meets the definition of public need. Ohio EPA will make the determination if a project meets public need during the ORAM verification process.

58. Utility Line Activities for Water and Other Substances. Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States,

provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground utility lines: This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States.

This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody.

District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites.

Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See General Condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR § 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For activities that require preconstruction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require preconstruction notification (see paragraph (b)(4) of General Condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see General Condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting

requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

Corps NWP 58 Specific Regional Conditions:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for all regulated activities that result in the permanent conversion of scrub/shrub and forested wetlands of greater than 1/10 of an acre per each single and complete project.
- If an inadvertent return of drilling mud occurs during a directional drilling activity and the clean-up of drilling mud includes a regulated discharge of dredged and/or fill material into waters of the United States and/or a regulated activity in a Section 10 navigable waterway, the permittee must notify the Corps within one (1) to two (2) days after the work has been conducted and provide a brief report that includes the location of the clean-up activity and a description of the clean-up measures implemented on-site.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Temporary or permanent impacts to category 3 wetlands are limited to less than 0.1 acres for activities involving the repair, maintenance, replacement, or safety upgrades to existing infrastructure that meets the definition of public need. Ohio EPA will make the determination if a project meets public need during the ORAM verification process.

59. Water reclamation and reuse facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities, including vegetated areas enhanced to improve water infiltration and constructed wetlands to improve water quality.

The discharge of dredged or fill material must not cause the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

This NWP also authorizes temporary fills, including the use of temporary mats, necessary to construct the water reuse project and attendant features. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities,

access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections C, D, and E apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed to category 3 wetlands.

60. Activities to Improve Passage of Fish and Other Aquatic Organisms.

Discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States for activities that restore or enhance the ability of fish and other aquatic organisms to move through aquatic ecosystems. Examples of activities that may be authorized by this NWP include, but are not limited to: the construction, maintenance, or expansion of conventional and nature-like fishways; the construction or expansion of fish bypass channels around existing in-stream structures; the replacement of existing culverts or low-water crossings with culverts planned, designed, and constructed to restore or enhance passage of fish and other aquatic organisms; the installation of fish screens to prevent fish and other aquatic organisms from being trapped or stranded in irrigation ditches and other features; the modification of existing in-stream structures, such as dams or weirs, to improve the ability of fish and other aquatic organisms to move past those structures.

The activity must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize dam removal activities.

Notification: For activities resulting in the loss of greater than 1/10-acre of waters of the United States, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Corps NWP 60 Specific Regional Condition:

- PCN, in accordance with NWP General Condition 32 and Regional General Condition 6, is required for use of this NWP.

Ohio 401 Certification Special Limitations and Conditions:

1. Ohio state certification general limitations and conditions sections A-F apply to this nationwide permit.
2. Individual 401 WQC is required for use of this nationwide permit when temporary or permanent impacts are proposed on or in any of the following waters:
 - a. category 3 wetlands;
 - b. category 1 and category 2 wetlands when impacts exceed 0.50 acres;
 - c. streams with an antidegradation category of superior high quality water, outstanding national resource water, or outstanding state water when impacts exceed 100 linear feet;
 - d. state wild and scenic rivers when impacts exceed 100 linear feet;
 - e. national wild and scenic rivers when impacts exceed 100 linear feet;
 - f. general high quality water bodies which harbor federally or state listed threatened or endangered aquatic species when impacts exceed 100 linear feet, unless the project has been coordinated with and approved by the USFWS and ODNR;
 - g. streams that meet or have an aquatic life use designation of exceptional warmwater habitat, coldwater habitat, or seasonal salmonid when impacts exceed 100 linear feet; and
 - h. all other stream or lake shorelines when impacts exceed 300 linear feet.
3. For an individual stream, while the repair or replacement of an existing culvert of any length is not limited by this certification, any culvert extension shall not exceed 300 linear feet.

Ohio Department of Natural Resources Coastal Zone Management Agency Federal Consistency Determination Condition:

For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained from the Ohio Department of Natural Resources Office of Coastal Management.

D. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective

permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR § 330.1 through § 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements.

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas.

Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an

important spawning area are not authorized.

4. Migratory Bird Breeding Areas.

Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds.

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material.

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes.

No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments.

If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows.

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains.

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment.

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

12. Soil Erosion and Sediment Controls.

Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills.

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance.

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project.

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers.

- a. No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river”

- for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
- b. If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.
 - c. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights.

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species.

- a. No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation.
- b. Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the

activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

- c. Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
- d. As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.
- e. Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- f. If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of

projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

- g. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their web pages at <http://www.fws.gov/> or <https://ipac.ecosphere.fws.gov/> and <https://www.fisheries.noaa.gov/topic/endangered-species-conservation> respectively.

19. Migratory Birds and Bald and Golden Eagles.

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

- a. No activity is authorized under any NWP which may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- b. Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not

submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

- c. Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.
- d. Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-federal applicant has not heard back

from the Corps within 45 days, the applicant must still wait for notification from the Corps.

- e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

Critical resource waters include NOAA-managed marine sanctuaries and marine monuments and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

- a. Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

- b. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation.

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

- a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
- d. Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

- e. Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- f. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
 - (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
 - (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)
 - (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.
 - (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that

addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

- (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).
- (6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).
- g. Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.
- h. Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
- i. Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures.

To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

- a. Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.
- b. If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).
- c. The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management.

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require

additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

The activity must comply with any regional conditions that may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

- a. The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.
- b. If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3-acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- c. If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which has a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications.

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A

copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification.

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- a. A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- c. The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States.

If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction

notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

- a. Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:
 - (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
 - (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed

under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

- b. Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:
- (1) Name, address and telephone numbers of the prospective permittee;
 - (2) Location of the proposed activity;
 - (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
 - (4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
 - i. For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.
 - ii. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
 - (5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special

aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

- (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;
- (8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;
- (9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and
- (10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

- c. Form of Pre-Construction Notification: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.
- d. Agency Coordination:
 - (1) The district engineer will consider any comments from federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.
 - (2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
 - (3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
 - (4) In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section

305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

- (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.
2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add activity-specific conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed NWP activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. However, compensatory mitigation shall not be required for activities authorized by NWP 27 because those activities must result in net increases in aquatic resource functions and services (see the text of NWP 27). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal when determining whether the net adverse environmental effects of the proposed NWP activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the proposed activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.
4. If the district engineer determines that the adverse environmental effects of the proposed NWP activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to

ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN review period (unless additional time is required to comply with general conditions 16, 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-

linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under

the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock, inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: (1) held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

G. General Limitations and Conditions for all Ohio Environmental Protection Agency 401 Certified Nationwide Permits

A. CULVERTS

Conditions 1-4 are required unless culverts have a gradient of greater than 1 % or are installed on bedrock or if a demonstration can be made that the aquatic organism passage design would cause downstream property damage from flooding:

1. For new and replacement culverts, bottomless or buried culverts are required when culvert size is greater than 48" in diameter. A buried culvert means that the bottom 10% by rise shall be buried below the existing stream bed elevation.
2. New culverts shall be designed and sized to accommodate bankfull width and match the existing depth of flow to facilitate the passage of aquatic organisms and movement of bed load.
3. Culvert replacement or maintenance projects shall, at a minimum, accommodate bankfull discharge. Culvert replacement shall be installed to match the existing depth of flow to facilitate the passage of aquatic organisms and movement of bedload. Culvert maintenance projects shall implement techniques to eliminate perched conditions caused by scour at the culvert outlet to accommodate aquatic organism passage and bed load transport if either are restricted.
4. When practicable, culverts shall be installed at the existing stream bed slope, to allow for the natural movement of bed load and aquatic organisms.
5. All other culverts shall be designed to accommodate bankfull discharge at a minimum and, when practicable, installed at the existing stream bed slope and buried.
6. Where culverts are installed for temporary crossings, the bottom elevations of the stream shall be restored as nearly as possible to pre-project conditions.

C. BEST MANAGEMENT PRACTICES

1. Unless subject to a more specific stormwater National Pollutant Discharge Elimination System (NPDES) permit, all best management practices for stormwater management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available at:

<https://epa.ohio.gov/divisions-and2026> Nationwide Permit Reauthorization Ohio State Water Quality Certification, or any watershed specific construction general permit.

2. Sediment and erosion control measures and best management practices must be designed, installed, and maintained in effective operating condition at all times during construction activities as required by applicable NPDES permits. Proper maintenance ensures corrective measures will be implemented for failed controls within 3 days of discovery.
3. For perennial and intermittent streams, in-stream sediment control measures shall not be utilized, with the exception of turbidity curtains parallel to the stream bank, for the purpose of sediment collection. All sediment and erosion control measures shall be entirely removed and the natural grade of the site restored once construction is completed.
4. All avoided water resources and associated buffers/riparian areas shall be demarcated in the field and protected with suitable materials (e.g., silt fencing, snow fencing, signage, etc.) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process and shall be entirely removed once construction is completed.
5. Disturbance and removal of vegetation from the project construction area is to be avoided where possible and minimized to the maximum extent practicable. Entry to surface waters shall be through a single point of access to the maximum extent practicable to minimize disturbance to riparian habitat. Unavoidable temporary impacts to forested riparian habitat shall be restored as soon as practicable after in water work is complete using tree and shrub species native to the specific ecoregion where the project is located.
6. All dredged material placed at an upland site shall be controlled so that sediment runoff to adjacent surface waters is minimized to the maximum extent practicable.
7. Straw bales shall not be used as a form of erosion/sediment control.
8. Heavy equipment shall not be placed below the ordinary high water mark of any surface water, except when no other alternative is practicable.
9. Temporary fill for purposes of access or staging shall consist of suitable non-erodible material and shall be maintained to minimize erosion.
10. Chromated copper arsenate (CCA) and creosote treated lumber shall not be used in structures that come into contact with waters of the state.
11. All dewatering activities must be conducted in such a manner that does NOT result in a violation of water quality standards.

12. All areas of final grade must be protected from erosion within seven days or within two days if within 50 feet of a surface water of the state.

13. All disturbed areas which remain dormant in excess of fourteen days must be protected from erosion within seven days from the last earth disturbing activity or within two days if within 50 feet of a surface water of the state.

14. In the event of authorized in-stream activities, provisions must be established to redirect the stream flow around or through active areas of construction in a stabilized, non-erosive manner to the maximum extent possible.

D. MITIGATION

1. Compensatory mitigation is required for the discharge of dredged or fill material into wetlands for permanent impacts exceeding 0.10 acres.

2. Compensatory mitigation is required for the discharge of dredged or fill material into streams for permanent impacts exceeding 0.03 acres.

3. When required, compensatory mitigation for wetlands and streams shall be provided in accordance with chapters 3745-1-54 and 3745-32-04 of the Ohio Administrative Code.

4. When compensatory mitigation will be provided wholly or in part at a mitigation bank or through an in-lieu fee program, credit purchase shall only be authorized at those banks or in-lieu fee programs approved by the Interagency Review Team (IRT).

E. DIRECTOR'S AUTHORIZATION

1. In accordance with the procedures outlined in **Appendix A**, Ohio EPA may grant coverage under this certification for any project that does not meet one or more of the terms and conditions for eligibility of this certification or where the district engineer has been granted authority to waive certain requirements. Coverage may be granted when Ohio EPA determines, consistent with the special limitations and conditions for each certification, and after considering comments received on the requested director's authorization, that a project will have such a minimal impact on water quality that an individual 401 WQC is not necessary provided all other terms and conditions of this certification have been met. If a director's authorization is not granted, an individual 401 WQC must be obtained. In no case may a director's authorization issued under this certification exceed an impact threshold authorized by the Corps' Nationwide Permit.

F. NOTIFICATION TO OHIO EPA

1. For any activity proposed to be authorized under NWPs 3, 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 49, 50, 51, 52, 53, 54, 57, 58, 59, and A, **when a PCN is not required by the Corps**, notification to Ohio EPA is required for impacts to the following resources:

- a. category 3 wetlands;
- b. ~0.10 acres of wetland.

2. Notifications required by E.1 should be submitted using the Ohio EPA 401 eBusiness Center and contain all information required by **Appendix B**, as well as a description of the proposed impacts including project design details.

3. For any activity proposed to be authorized under NWPs 4, 5, 6, 7, 13, 14, 15, 18, 23, 25, 27, 29, 30, 32, 33, 36, 39, 40, 41, 42, 43, and A, **when a PCN is not required by the Corps**, notification to Ohio EPA is required for impacts to the following resources:

- a. permanent impacts to >0.03 acres of stream;

4. Notifications required by E.3 should be submitted using the Ohio EPA 401 Preapplication Request Form through the eBusiness center and contain all information required by **Appendix B**, as well as a description of the proposed impacts including project design details.

5. When notification to Ohio EPA is required by conditions E.1 and E.3 above, the applicant shall not begin the activity until either:

- a. They are notified in writing by Ohio EPA that the activity may proceed under the 401 WQC for the NWP; or
- b. 45 calendar days have passed from Ohio EPA's receipt of the notification and the applicant has not received written notice from Ohio EPA that additional information is necessary or that an individual 401 WQC is required.

G. MISCELLANEOUS

1. Authorization under this certification does not relieve the certification holder from the responsibility of obtaining any other federal, state or local permits, approvals or authorizations.

2. For purposes of this certification the Corps' definition of single and complete project shall be applied to all conditions regarding impacts, mitigation, and director's authorizations. If a project includes impacts that are ineligible under this certification, an applicant must apply for an individual 401 WQC or a director's authorization for the entire project.

3. For purposes of this certification temporary impact means temporary activities, lasting no longer than 2 years, which facilitate the nature of the activity or aid in the access, staging, or development of construction that are short term in nature and which are expected, upon removal of the temporary impact, to result in the surface water returning to conditions which support pre-impact biological function with minimal or no human intervention within 12 months following the completion of the temporary impact. Examples of temporary impacts include, but are not limited to access roads, work pads, staging areas, and stream crossings, including utility corridors. Activities that result in a wetland conversion (e.g. forested to non-forested) are not considered temporary impacts.

4. In the event that the issuance of a nationwide permit by the Corps requires individual 401 WQC for an activity that constitutes an emergency as defined in 33 CFR 325.2(e)(4), the limitation and/or condition requiring the individual 401 WQC is not applicable and the project may proceed upon approval by the Corps provided all other terms of this certification, including mitigation, are met.

5. Representatives from Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this certification. This includes, but is not limited to, access to and copies of any records that must be kept under the conditions of this certification; and authorization to sample and/or monitor any discharge activity or mitigation site. Ohio EPA will make a reasonable attempt to notify the applicant of its intention to inspect the site in advance of that inspection.

6. Impacts as referenced in this certification consist of waters of the United States, that are also waters of the state, directly impacted by the placement of fill or dredged material.

7. In accordance with the procedures outlined in **Appendix B**, and where specifically required in the special limitations and conditions of this certification, an applicant proposing to impact a wetland shall perform a wetland characterization analysis consistent with the Ohio Rapid Assessment Method (ORAM) to demonstrate wetland category for all projects requiring a PCN to the Corps or notification to Ohio EPA.

8. If recommended in comments received from the United States Fish and Wildlife Service (USFWS) or the Ohio Department of Natural Resources (ODNR), a mussel survey and relocation shall be performed by a professional malacologist with appropriate minimum qualifications in coordination with the USFWS and/or ODNR Division of Wildlife, as described in the Ohio Mussel Survey Protocol prior to the discharge of fill material into streams.

Appendix A

Director's Authorization Process

1. To apply for a director's authorization for coverage under this certification, the applicant must provide to Ohio EPA the following:
 - a. A completed Director's Authorization Request Form submitted through the Ohio EPA eBusiness center;
 - b. A copy of the pre-construction notification submitted to the Corps or a copy of the notification to Ohio EPA, if no PCN is required, including all attachments;
 - b. A copy of the provisional nationwide permit notification issued by the Corps including all attachments and special conditions, if any;
 - c. A copy of the mitigation plan as approved by the Corps, if applicable;
 - d. A detailed description of the conditions within this certification that are not being met; A detailed description of any NWP terms and conditions, including impact limits that the Corps district engineer has waived for the project, if applicable;
 - e. A rationale of how the applicant believes the project will minimally impact water quality for those impacts to resources that do not meet one or more of the terms and conditions within this certification, including reason(s) why the resources are unable to be avoided;
 - f. Comments received from the Ohio Department of Natural Resources and United States Fish and Wildlife Service regarding threatened and endangered species or comments from an applicant that has been authorized by these entities to make threatened and endangered species determinations;
 - g. A one-time review fee of \$2000 for the project;
 - h. A detailed description of how the project meets public need, as defined in [OAC 3745-1-50](#), for impacts to category 3 wetlands;
 - i. Documentation as required under Appendix B; and
 - j. Any other documentation as may be required under this certification.
2. Upon receipt of the director's authorization request containing items a. through i. outlined above, excluding item c., the director will post the materials on the Ohio EPA, DSW webpage and invite public comment on the request for 15 days. The director will review and consider the comments received during the public comment period before making a decision on the director's authorization.

Appendix B

Wetland and Stream Notification

1. ORAM Verification Process for Wetlands. The ORAM results shall be included with the preconstruction notification (PCN) or notification to Ohio EPA if a PCN is not required by the Corps. For each wetland proposed for impact the applicant must provide the following information for review in accordance with the ORAM verification procedure:

- a. A completed request form submitted through the Ohio EPA eBusiness center;
- b. Complete ORAM forms prepared in accordance with the current ORAM manual;
- c. Wetland delineation prepared in accordance with the current method required by the Corps;
- d. A minimum of four high resolution color photographs taken while facing each of the four cardinal directions of each wetland proposed for impact. Photographs must accurately depict the quality of the wetland and may not include a majority of dying or dead vegetation or excessive cover due to seasonal conditions that vegetation and substrates cannot be observed, such as leaf litter, snow, or ice. Photographs deemed to be insufficient of representing the wetland will be required to be retaken once seasonal conditions are appropriate. Photographs shall be clearly labeled with the wetland name, direction, and date;
- e. USGS topographical map, National Wetlands Inventory map, Soil Survey map and aerial images (both historical and current) which clearly outline the entire wetland boundary;
- f. Coordination letter from the Ohio Department of Natural Resources (ODNR), Environmental Review indicating the presence or absence of state listed threatened or endangered species or comments from an applicant that has been authorized by ODNR to make threatened and endangered species determinations; and
- g. A detailed description of how the project meets public need, as defined in OAC 3745-1-50, for impacts to category 3 wetlands.

2. Notification Process for Streams. When a PCN is not required for impacts to streams >0.03 acres, the following information must be provided to Ohio EPA in accordance with the General Condition E, Notifications to Ohio EPA:

- a. A completed Pre-application Request form submitted through the Ohio EPA eBusiness center;
- b. Complete Ohio Stream Assessment Method (OSAM) assessment, or other material to determine appropriate mitigation, such as Qualitative Assessment Habitat Evaluation Index (QHEI), Headwater Habitat Evaluation Index (HHEI), or existing use demonstration as outlined in OAC 3745-1-07;
- c. A specific and detailed mitigation plan, if applicable; and
- d. A minimum of four high resolution color photographs taken while facing each of the four cardinal directions of each stream proposed for impact. Photographs

must accurately depict the quality of the stream and may not include a majority of dying or dead vegetation or excessive cover due to seasonal conditions that vegetation and substrates cannot be observed, such as leaf litter, snow, or ice. Photographs deemed to be insufficient of representing the stream will be required to be retaken once seasonal conditions are appropriate. Photographs shall be clearly labeled with the stream name, direction, and date.

HELPFUL INFORMATION FOR COMPLIANCE WITH THE REGIONAL AND GENERAL CONDITIONS

DISCLAIMER: The information below is intended to provide helpful contact information and other submittal recommendations. Contact the appropriate local, state, or federal agency for the most updated links to ensure compliance with the conditions with the special and general conditions. The Corps continues to encourage the public to use the Regulatory Request System (RRS) for an improved permitting experience.

General Condition 1 (Navigation)

Navigation Charts: The navigation charts for the Buffalo, Huntington, Louisville and Pittsburgh Districts can be found in the Inland Electronic Navigational Charts at the following link: <https://iencccloud.us/>

Locks and Dams: Information for all Locks and Dams located within the Buffalo, Huntington, Louisville, and Pittsburgh Districts can be found at the following link: <https://www.lrd.usace.army.mil/Water-Information/Navigation/>

Notice to Navigation Interests Request Sheets: The Notice to Navigation Interests Request Sheets for the Buffalo, Huntington, Louisville, and Pittsburgh Districts can be found at the following link: <https://ndc.ops.usace.army.mil/ords/f?p=107:1>.

General Condition 3 (Spawning Areas) and Regional General Condition 4 (In-Water Work Exclusion Dates)

For information about specific stream designations contact Ohio Environmental Protection Agency at 614-644-2001 or use the following link for their effective Division of Surface Water Rules: <https://epa.ohio.gov/divisions-and-offices/surface-water/regulations/effective-rules>. For information or questions regarding in-water work exclusion dates, including any waiver request questions for in-water work exclusion dates, please contact the Ohio Department of Natural Resources, Division of Wildlife at 614-265-7017 or by email at matthew.stooksbury@dnr.ohio.gov.

General Condition 4 (Migratory Bird Breeding Areas) and General Condition 19 (Migratory Birds and Bald and Golden Eagles)

Prior to the submittal of a PCN, information to assist in complying with General Conditions 4 and 19 may be obtained from the United States Fish and Wildlife Service, Ohio Ecological Services Field Office at:

Address: 4625 Morse Road, Suite 104
Columbus, Ohio 43230
Email: ohio@fws.gov
Phone: (614) 416-8993

The Ohio Division of Natural Resources Division of Wildlife may be contacted at (800) 945-3543.

General Condition 5 (Shellfish Beds)

Shellfish beds in Ohio include concentrations of freshwater mussels, as determined by the Ohio Department of Natural Resources or the United States Fish and Wildlife Service. All native mussels are protected in the State of Ohio (Section 1533.324 of the Ohio Revised Code). In addition, federally listed or proposed species occur in the state and are protected by the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. § 1531 et seq.). All rivers and tributaries that contain mussels or potential mussel habitat must be surveyed prior to any proposed streambed disturbance. Any juvenile and adult specimens must be located to an acceptable location, as approved by the Ohio Department of Natural Resources and the United States Fish and Wildlife Service. Individual adult mussel specimens must be marked when relocated. Juveniles are not to be marked. Currently accepted protocol and supporting materials can be found on the Ohio Department of Natural Resources' website:

<https://ohiodnr.gov/wps/portal/gov/odnr/buy-and-apply/special-use-permits/collecting-research/ohio-mussel-surveyor>

In addition, federally endangered and federally threatened freshwater mussel species, with federally designated or proposed designated critical habitat, are known to occur in the state. These species are protected by the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). Should federally listed or proposed species be unexpectedly encountered, the work must cease, and the United States Fish and Wildlife Service must be contacted for consultation. See helpful information below for General Condition 18.

General Condition 7 (Water Supply Intakes)

Locations of drinking water source protection areas associated with public water supply intakes, including the name of the public water supply, can be found at the following link:

<https://geo.epa.ohio.gov/portal/apps/experiencebuilder/experience/?id=0e4135cb7e1a40509ed321cddaae1407>

Contact information for public water suppliers can be obtained from Ohio Environmental Protection Agency by contacting the Division of Drinking and Ground Waters at whp@epa.ohio.gov or 614-644-2752.

General Condition 10 (Fills Within 100-year Floodplains)

The following website provides a statewide listing of Floodplain Managers in Ohio:
<https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-ODNR/water-resources/floodplains/>.

General Condition 16 (Wild and Scenic Rivers) and Regional General Condition 6c (National Wild and Scenic Rivers)

Prior to submitting a PCN for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with General Condition 16 and Regional General Condition 6c. Any determination provided by the National Park Service should be submitted with the PCN. The following website provides information on National Wild and Scenic Rivers within Ohio: <https://www.rivers.gov/ohio>.

General Condition 18 (Endangered Species) and Regional General Condition 6a (Threatened and Endangered Species)

Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the continued existence of any federally or proposed federally listed species.

To obtain the most up to date information on federally threatened and endangered species, and to download an official species list, applicants are encouraged to utilize the United States Fish and Wildlife Service IPaC System found at <https://ipac.ecosphere.fws.gov/>. To expedite processing, available and applicable determination keys in IPaC should be completed with the submission of any PCN or biological resources report. The report must include a description of the action to be considered; the specific area that may be affected by the action; any listed or proposed species or critical habitat or proposed critical habitat that may be affected by the action; the manner in which the action may affect any listed or proposed species or critical habitat or proposed critical habitat; and an analysis of any cumulative effects on listed or proposed species and/or their critical habitat or proposed critical habitat. The report must include copies of all references, any proposed mitigation plan, and any other relevant available information. Information on the location of federally listed or proposed threatened and endangered species and their critical habitat or proposed critical habitat can be obtained directly from the offices of the United States Fish and Wildlife Service (USFWS) at <http://www.fws.gov/> or <https://ipac.ecosphere.fws.gov/>. In general, PCN is required under General Condition 18 of the NWP's for any project where any federally listed or proposed threatened and endangered species, or their proposed or designated critical habitat, "might be affected" or "would be in the vicinity of the activity." If IPaC

indicates no listed species are present or if the determination key(s) determine no effect to listed species, then General Condition 18 does not apply.

As mentioned in General Condition 18, federal applicants should follow their own procedures for complying with the requirements of the ESA. Federal applicants, including applicants that have received federal funding, must provide the district engineer with the appropriate documentation to demonstrate compliance with ESA requirements. Non-federal applicants that have completed a Habitat Conservation Plan and obtained an Incidental Take Permit to cover take for a project should also provide the district engineer with the appropriate documentation to demonstrate compliance with ESA requirements.

Prior to the submittal of a PCN, applicants may also contact the USFWS, Ohio Ecological Services Field Office at:

Address: 4625 Morse Road, Suite 104
Columbus, Ohio 43230
Email: ohio@fws.gov
Phone: (614) 416-8993

Activities that “might” affect endangered or threatened species may include, but are not limited to:

- Removal of trees $\geq$ three (3) inches diameter at breast height; and/or
- Removal or replacement of culverts where evidence of use by bats has been documented; and/or
 - Culverts must be both $\geq$ three (3) feet in diameter and $\geq$ 23 feet in length to be suitable habitat for federally listed bats
 - Bridges and suitable culverts should be examined for evidence of bat use following procedures in Appendix K of the most recent “Range-wide Indiana bat and northern long-eared bat survey guidelines.” <https://www.fws.gov/media/range-wide-indiana-bat-and-northern-long-eared-bat-survey-guidelines>
- Impacts to a sand, gravel, and/or cobble beach and/or mud flat on the Lake Erie shoreline; and/or
- Impact a jurisdictional waterway listed in Table 1 below; and/or
- Impact a jurisdictional wetland in a township listed in Table 1 below.

Table 1 – Counties, Waterways and Wetlands within Townships		
County	Waterway	Township
Adams	Little East Fork (Ohio Brush Creek), Ohio River, Scioto Brush Creek, South Fork Scioto Brush Creek	
Ashtabula	Conneaut Creek, Mill Creek, Grand River, Pymatuning Creek	Andover, Austinburg, Cherry Valley, Colebrook, Dorset, Hartsgrove, Harpersfield, Morgan, New Lyme, Orwell, Richmond, Rome, Trumbull, Wayne, Williamsfield, Windsor
Athens	Federal Creek, Hocking River, Ohio River	
Auglaize	Auglaize River	
Brown	Eagle Creek, Ohio River	
Butler	Great Miami River	Lemon, Liberty
Champaign		Mad River, Union, Urbana
Clark	Little Miami River	Bethel, Moorfield, Pleasant, Springfield
Clermont	Ohio River	
Clinton		Chester, Richland, Wayne
Columbiana		Butler, Fairfield, Hanover, Knox, Unity
Coshocton	Killbuck Creek, Mill Creek, Mohican River, Muskingum River, Tuscarawas River, Wakatomika Creek, Walhonding River	
Crawford		Auburn, Bucyrus, Cranberry, Dallas, Holmes, Whetstone
Defiance	St. Joseph River	Milford
Delaware	Alum Creek, Mill Creek, Olentangy River	
Erie		Margaretta
Fairfield	Walnut Creek	Walnut
Fayette	Deer Creek	Concord, Green, Jasper, Union
Franklin	Alum Creek, Big Darby Creek, Big Walnut Creek, Little Darby Creek, Scioto River,	

Table 1 – Counties, Waterways and Wetlands within Townships		
County	Waterway	Township
	Walnut Creek	
Fulton	Swan Creek	
Gallia	Ohio River	
Greene	Little Miami River	Bath, Beaver Creek, Spring Valley, Sugar Creek
Hamilton	Great Miami River, Little Miami River, Ohio River	
Hancock	Blanchard River	
Hardin	Blanchard River	Blanchard, Dudley, Hale, Jackson, McDonald, Roundhead
Hocking		Benton, Laurel
Holmes		Prairie
Huron		New Haven, Richmond
Knox	Wakatomika	
Lake	Grand River	Madison
Lawrence	Ohio River, Symmes Creek	
Licking	Wakatomika	Licking, Union
Logan	Great Miami River	Perry, Richland, Stokes, Washington, Zane
Lucas	Swan Creek	Harding, Jerusalem, Monclova, Spencer, Springfield, Swanton
Madison	Big Darby Creek, Deer Creek, Little Darby Creek	
Mahoning		Beaver, Boardman, Canfield, Green, Poland, Springfield
Marion	Olentangy River, Tymochtee Creek	Big Island, Bowling Green, Grand, Green Camp, Montgomery, Salt Rock
Meigs	East Branch Shade River, Middle Branch Shade River, Ohio River	
Miami	Great Miami River, Stillwater River	
Montgomery	Stillwater River	Mad River, Wayne
Morgan	Muskingum River	
Muskingum	Muskingum River, Wakatomika Creek	
Ottawa		Bay, Benton, Carrol, Erie

Table 1 – Counties, Waterways and Wetlands within Townships		
County	Waterway	Township
Perry		Thorn
Pickaway	Big Darby Creek, Big Walnut Creek, Deer Creek, Walnut Creek, Scioto River	
Pike	Scioto River	
Portage		Aurora, Atwater, Charlestown, Deerfield, Edinburg, Franklin, Freedom, Mantua, Nelson, Palmyra, Paris, Randolph, Ravenna, Rootstown, Streetsboro
Preble		Dixon, Gasper, Israel, Jackson, Lanier, Monroe, Somers, Twin, Washington
Putnam	Auglaize River, Blanchard River	
Richland		Plymouth
Ross	Deer Creek, Middle Fork Salt Creek, Salt Creek, Scioto River	
Sandusky		Rice, Riley, Townsend
Scioto	Little Scioto River, Ohio River, Rocky Fork Little Scioto River, Scioto Brush Creek, Scioto River, South Fork Scioto Brush Creek	Nile, Rush, Union
Shelby	Great Miami River	
Stark		Lexington, Marlboro
Summit		Hudson, Tallmadge, Twinsburg
Trumbull	Grand River, Pymatuning Creek	All townships
Tuscarawas	Tuscarawas River	
Union	Big Darby Creek, Little Darby Creek, Mill Creek, Treacle Creek	Allen, Darby, Washington
Vinton	Middle Fork Salt Creek	
Warren	Great Miami River, Little Miami River	Clear Creek, Deerfield, Massie, Turtle Creek, Union, Washington, Wayne
Washington	Little Muskingum River, Muskingum River, Ohio River	

Table 1 – Counties, Waterways and Wetlands within Townships		
County	Waterway	Township
Wayne		Clinton, Franklin, Wooster
Williams	Fish Creek, St. Joseph River, West Branch St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wyandot	Tymochtee Creek	Antrim, Marseilles, Mifflin, Pitt
Stark		Lexington, Marlboro
Summit		Hudson, Tallmadge, Twinsburg
Trumbull	Grand River, Pymatuning Creek	All townships
Tuscarawas	Tuscarawas River	
Union	Big Darby Creek, Little Darby Creek, Mill Creek, Treacle Creek	Allen, Darby, Washington
Vinton	Middle Fork Salt Creek	
Warren	Great Miami River, Little Miami River	Clear Creek, Deerfield, Massie, Turtle Creek, Union, Washington, Wayne
Washington	Little Muskingum River, Muskingum River, Ohio River	
Wayne		Clinton, Franklin, Wooster
Williams	Fish Creek, St. Joseph River, West Branch St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wyandot	Tymochtee Creek	Antrim, Marseilles, Mifflin, Pitt

Projects may ultimately result in a “No Effect”, a “May Affect, Not Likely to Adversely Affect”, or a “May Affect, Likely to Adversely Affect” determination depending on the details of the project, project location, proposed conservation measures, and implementation of avoidance and minimization measures. These factors are considered during formal and informal consultation under Section 7 of the ESA between the lead federal action agency and the USFWS.

A “No Effect” determination is only an appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat. In this circumstance, no effect means that no listed species or critical habitat are present at any time in the project area.

A “May Affect” determination is the appropriate conclusion when a proposed action may pose any effects on listed species or critical habitat. Additional consultation with the

Service may be needed to assist the lead federal action agency in making a final effects determination. There are two (2) outcomes during this consultation with the Service for an action, that it:

- “Is not likely to adversely affect” – the appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. A “is not likely to adversely affect” may be the appropriate conclusion when avoidance and minimization measures are implemented as part of the proposed action, even if a species is present in the project area.
- Is likely to adversely affect – the appropriate conclusion if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of “is not likely to adversely affect”). In the event the overall effect of the proposed action is beneficial to the listed species, but is likely to cause some adverse effects, the proposed action “is likely to adversely affect” the listed species. A “likely to adversely affect” determination, would then trigger formal Section 7 consultation with the Service.

Section 7 consultation can be completed through informal consultation (may affect, is not likely to adversely affect; 50 CFR § 402.02; 50 CFR § 402.13) or through formal consultation (may affect, is likely to adversely affect; 50 CFR § 402.02; 50 CFR § 402.14) between the Service and the lead federal action agency. Reference Chapter 3 and Chapter 4, respectively, of the Final ESA Section 7 Consultation Handbook (Handbook; March 1998). This may also be true for informal and formal conference opinions for federally proposed species and/or federally proposed designated critical habitat, per Chapter 6 of the Handbook (50 CFR § 402.02; 50 CFR § 402.10).

As indicated above, in the case of any NWP, the District Engineer, as lead federal agency authorizing the action, is responsible for making an effects determination for federally listed or proposed threatened and endangered species as well as any proposed designated or designated critical habitat. This includes projects where the action “May Affect” such species, or their critical habitat.

Technical assistance to a non-federal agency does not substitute or constitute completed Section 7 consultation. Section 7 consultation is not complete until the federal action agency, or their designated non-federal representative, submits a determination of effects, and the USFWS concurs with the federal action agency's determination.

Common language included in USFWS technical assistance letters include the following language and is indicative of a “may affect, is not likely to adversely affect” determination and requires consultation between the USFWS and the Corps:

- If there is a federal nexus for the project (e.g., federal funding provided, federal permits required to construct), then no tree clearing should occur on any portion of the project area until consultation under section 7 of the ESA, between the Service and the federal action agency, is completed. We recommend the federal action agency submit a determination of effects to this office, relative to the Indiana bat and northern long-eared bat, for our review and concurrence. This letter provides technical assistance only and does not serve as a completed section 7 consultation document.
- Due to the project type, size, and location, we do not anticipate adverse effects to any other federally endangered, threatened, or proposed species, or proposed or designated critical habitat. Should the project design change, or additional information on listed or proposed species or their critical habitat become available, or if new information reveals effects of the action that were not previously considered, coordination with the Service should be initiated to assess any potential impacts.

General Condition 20 (Historic Properties), Regional General Conditions 5f (Ohio and Erie Canal National Heritage Area), 5g (Muskingum River Navigation Historic District), and 6b (Cultural Resources)

Under the National Historic Preservation Act (NHPA), the Corps must ensure no federal undertaking, including a Corps permit action, which may affect historic resources, is commenced before the impacts of such action are considered and the Advisory Council on Historic Preservation and the State Historic Preservation Office (SHPO) are provided an opportunity to comment as required by the NHPA, 36 CFR 800, and 33 CFR Part 325, Appendix C.

The Ohio National Register of Historic Places (NRHP) can be found at the following link: <https://www.ohiohistory.org/preserve/state-historic-preservation-office/nationalregister>

When reviewing a PCN, the Corps will scope appropriate historic property identification efforts and, if applicable, work with the applicant to take into account the effect of the proposed activity on historic properties. In these instances, information and coordination may include:

- The applicant may choose to conduct pre-coordination with the State Historic Preservation Office prior to submitting a PCN via Section106@ohiohistory.org. Any correspondence related to this pre-coordination should be provided with the PCN;

- The Ohio History Connection, State Historic Preservation Office may be contacted at:

Address: Ohio History Connection
800 E. 17th Ave., Columbus, Ohio 43211
Phone: (614) 297-2300
Email: Section106@ohiohistory.org

To identify potential historic properties that may be affected by a proposed project, the following information may be reviewed and/or provided with the PCN when applicable:

- a. A detailed description of the project site in its current condition (i.e. prior to construction activities) including information on the terrain and topography of the site, the acreage of the site, the proximity of the site to major waterways, and any known disturbances within the site.
 - b. A detailed description of past land uses in the project site.
 - c. Photographs and mapping showing the site conditions and all buildings or structures within the project site and on adjacent parcels are useful. Photographs and maps supporting past land uses should be provided as available.
 - d. Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.
 - e. United States Geological Survey (USGS) 7.5' series topographic maps;
 - f. Ohio History Connection State Historic Preservation Office files including:
 - i. Ohio Archaeological Inventory files;
 - ii. Ohio Historic Inventory files;
 - iii. Ohio State Historic Preservation Office Cultural Resources Management /contract archaeology files;
 - iv. NRHP files including Historic Districts; and
 - v. County atlases, histories and historic USGS 15' series topographic map(s).
- When needed to evaluate effects to historic properties, the applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) during this data gathering process. These professionals can assist with compiling the project information discussed above and should provide recommendations as to whether the proposal has the potential to affect historic properties and if further effort is needed to identify or assess potential effects to historic properties. These professionals can also compile preliminary review information to submit to the district engineer as part of the application submittal. The Corps may request additional information and/or surveys be conducted such as a Phase 1 Archaeological Survey or an Architectural Survey.

General Condition 23 (Mitigation) and Regional General Condition 7 (Compensatory Mitigation)

Information pertaining to mitigation can be found at the following link:

<https://www.lrd.usace.army.mil/Missions/Regulatory/Ohio/>

General Condition 25 (Water Quality) and Regional General Condition 6e (Clean Water Act Section 401 Water Quality Certification)

The Ohio Environmental Protection Agency may be contacted at:

Address: Lazarus Government Center
50 W Town St. Suite 700
Columbus, Ohio 43215
Phone: (614) 644-2001

Information pertaining to the Ohio Environmental Protection Agency water quality certification (WQC) program, including the Section 401 Clean Water Act WQC application form, can be obtained at the following link: <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/water-quality-certification-and-isolated-wetland-permits>

General Condition 24 (Coastal Consistency)

The Ohio Department of Natural Resources may be contacted at:

Address: 2514 Cleveland Road East
Huron, Ohio 44839
Phone: 419-626-7980
888-644-6267 (toll free)

Information pertaining to the Ohio Department of Natural Resources Coastal Management Program, including the Federal Consistency form, can be obtained at the following link: <https://ohiodnr.gov/discover-and-learn/safety-conservation/about-odnr/coastal-management>

General Condition 32 (Pre-Construction Notification) and Regional General Condition 6 (Pre-Construction Notification)

The nationwide permit pre-construction notification form (Form ENG 6082) may be obtained at the following link:

https://www.publications.usace.army.mil/Portals/76/Eng_Form_6082_2019Oct.pdf

PCN Submittal:

- a. PCNs may be submitted via the Corps' Regulatory Request System at: <https://rrs.usace.army.mil/rrs/> or saved as a PDF document, and then submitted as an attachment in an email to the respective district, as follows:
 - Buffalo District – LRB.Ohio.RegActions@usace.army.mil
 - Huntington District – LRH.permits@usace.army.mil
 - Pittsburgh District – Regulatory.Permits@usace.army.mil
 - Louisville District – CELRL.Door.To.The.Corps@usace.army.mil
- b. Electronic documents must have sufficient resolution to show project details. The Department of the Army permit application and supporting documents submitted electronically must not exceed 10 megabytes (10MB) per email. Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.
- c. For tracking and processing purposes, the email should include the following:
 - i. Email Subject Line: Include the name of the applicant, type of Department of the Army permit application request, and location (County and State). Example: RE: Doe, John, Department of the Army permit application and CWA Section 401 Water Quality Certification Request, Fayette County, Ohio;
 - ii. Email Body: 1) Brief description of the proposed project; 2) Contact information (phone number, mailing address, and email address) for the applicant and/or their agent; and 3) The project location: address and latitude/longitude in decimal degrees (e.g., 42.92788° N, 88.36257° W).
- d. If you do not have internet access, information may be submitted through the United States Postal Service to the appropriate Regulatory Office however, it is optimal to expedite processing by providing a complete application package electronically:

United States Army Corps of Engineers, Buffalo District
ATTN: Regulatory Branch
478 Main Street
Buffalo, New York 14202

United States Army Corps of Engineers, Huntington District
ATTN: Regulatory Division
502 Eighth Street
Huntington, West Virginia 25701-2070

United States Army Corps of Engineers, Louisville District
ATTN: CELRL-RD, Room 752

600 Dr. Martin Luther King Jr. Place
Louisville, Kentucky 40202-0059

United States Army Corps of Engineers, Pittsburgh District
William S. Moorhead Federal Building
1000 Liberty Avenue
Regulatory Division, Ste. 2200
Pittsburgh, Pennsylvania 15222-4186

Ordinary High Water Mark

Ordinary high water mark identification and/or delineation for official Corps' Regulatory purposes will continue in accordance with the applicable ordinary high water mark definition in the Federal regulations, Regulatory Guidance Letter 05-05, and any applicable Corps' district policies. However, the [Final National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams](#) and the [Rapid Ordinary High Water Mark \(OHWM\) Field Delineation Data Sheet \(ENG 6250\)](#) may be used as technical resources to assist with identifying and delineating the ordinary high water mark using a scientifically supported, rapid framework.

Wetland Delineations

The Recommended Minimum Standards for Aquatic Resource Delineation Reports (ARDR) and the Guide for Recording Aquatic Resource Delineations Using Global Navigation Satellite Systems (GNSS) have been posted to the Corps HQ technical and biological resources page here in the wetlands delineation and classification section.

The ARDR document outlines recommended minimum standards for documenting aquatic resource delineations in an ARDR. It includes an attached "Aquatic Resource Delineation Report Template" to help practitioners standardize report format, facilitating efficient USACE verification.

The GNSS provides recommendations for using high-accuracy GNSS receivers and GIS to electronically map aquatic resource boundaries. Consistent application of these guidelines supports accurate data collection, quantification of aquatic resource extent, and spatial assessment of proposed project impacts.

These resources are intended to promote national consistency and accuracy in documenting aquatic resource delineations. Accurate delineations are crucial for assessing project impacts, determining the appropriate level of review, and evaluating compensatory mitigation needs.