

CONTRACT SR-63

**WILSON STREET to ELLERBE CREEK OUTFALL SANITARY SEWER REPAIR and
REPLACEMENT and WATER MAIN REPLACEMENT,
2015**

The Contractor: _____

The Project: **Contract SR-63, Wilson Street to Ellerbe Creek Outfall Sanitary Sewer
Repair and Replacement and Water Main Replacement, 2015**

Number of Days for Completion: **210 days**

Daily Liquidated Damages: **\$800**

THIS Contract is dated, made and entered into as of the _____ day of _____, 20____
by and between the City of Durham, a North Carolina municipal corporation (the City) and
(J.F. Wilkerson Contracting Company, Inc.) , a corporation organized and existing under
the laws of [North Carolina]

SECTION 1 - AGREEMENT. The Contractor, for and in consideration of the payments
and agreements to be made and performed by the City, and hereto annexed, agrees with the
City at Contractor's own proper cost and expense, and with skill and diligence, to do the
Work. "Work" (with an initial capital letter) means all the construction and services,
including all labor, materials, equipment, services, water, heat, utilities, transportation, and
other facilities provided or to be provided by the Contractor, to fulfill the Contractor's
obligations, including its obligation to construct and complete ready for use **SR-63 Wilson
Street to Ellerbe Creek Outfall Sanitary Sewer Repair and Replacement and Water
Main Replacement, 2015** as herein set forth, in accordance with this Contract, including
such plans and detailed directions, drawings, etc., as the Engineer gives from time to time
pursuant to the Engineer's authority under this Contract.

SECTION 2 - CONTRACT PRICE. In the amount of **\$1,638,848.00**, the Contractor agrees
to receive the prices stated in the Contractor's proposal (the "Proposal") in full
compensation for performing the Work; the Contractor for said consideration shall be
responsible for all loss or damage arising out of the nature of the Work or from any action
of the elements, for all expenses incurred by or in consequence or the suspension of
discontinuance of said Work and for well and faithfully completing the Work.

SECTION 3 - DEFINITIONS. Unless the context otherwise requires the following words in
this Contract they shall refer as follows: Engineer shall mean Director of Water
Management, or authorized assistants acting within the scope of the Director's actual
authority. The word "include" in all its forms (included, including, etc.) is to be read as
incorporating the expression "but not limited to". "Work" is defined in Section 1 above.

SECTION 4 - UNIT QUANTITIES. (a) It is hereby agreed that the preliminary measure-
ments and estimated quantities are not necessarily correct and that payments to be received
by the Contractor shall be the actual quantities developed by construction of the Work at the
unit prices contained in this Contract or as otherwise provided. (b) If any specifications or

estimates are erroneous that were in the information made available to the Contractor by the City, and the error was caused by professional opinion provided to the City by an independent engineer or engineering firm ("independent" meaning that the engineer is not an employee of the City), then the Contractor shall make no claim against the City or its employees, officers, or officials for any damage or loss suffered by the Contractor in reliance on those specifications or estimates, except nothing in this Section is intended to limit the Contractor's rights under Section 4(a) or Sections 5, 6, or 7.

SECTION 5 - CONTRACT EXTENSIONS. The City reserves the right to extend, amend or modify the Contract Quantities **upon the same terms and at the same unit prices** provided that such extensions shall not exceed in cost fifty percent (50%) of the original Contract price. Such extensions of Work shall not include substantive changes in the original scope of Work except to responds to unknown or unforeseen circumstances and reasonable modifications of the Work. Such extensions shall be made by written amendment or change order executed by authorized representatives. Such extensions will automatically extend the time of completion in proportion to the dollar value.

SECTION 6 - CONTRACT CHANGES. It is agreed that the City, acting through the Engineer, shall have the right to determine the amount of Work to be done under this Contract and may, at any time, make any changes in the dimensions, grades, and alignment and may increase or decrease the quantity of Work to be done or may entirely exclude any of the Work without thereby altering or invalidating any of the prices named in this Contract in any respect. If such action be taken, unit prices appearing in the Proposal shall control the final amount paid. If such alterations diminish the quantity of Work to be done, they shall not constitute a claim for damages for loss of anticipated profits or otherwise.

SECTION 7 - ADDITIONAL WORK AND/OR MATERIALS. The City, acting through the Engineer may require the Contractor to do additional Work which does not appear in the Proposal at fixed unit prices but which may be found necessary to complete the proper prosecution and completion of the Work. Payment will be made based upon the extra work item found in the General Specification Section of this Contract. No materials shall be furnished other than those included in the Contract for which unit prices are stated, except upon written order of the Engineer given prior to the beginning of performance of such furnishing of such materials. No Work shall be done (except as provided in the preceding sentence), except upon written order of the Engineer given prior to the beginning of performance of such Work. Without such written order in advance, the Contractor shall not be entitled to payment for such additional materials or Work, either on the principle of quantum merit, or unjust enrichment, extra work, or any other legal or equitable theory. Claims for extra Work (including materials) shall be filed with the Engineer within ten days after the completion of the Work (including materials) for which the claim is made. Before a claim can be made for such additional materials, the materials must be installed in their final position before a claim can be made.

SECTION 8 - RESPONSIBILITIES OF ENGINEER. The Engineer shall in all cases determine the quality and quantity of the Work and shall determine all questions relating to lines, levels and dimensions of the Work, and as to the interpretation of the plans and specifications.

SECTION 9 – CONSTRUCTION SURVEYING. Deleted section

SECTION 10 - CITY INSPECTORS. The City reserves the right to place inspectors on the Work, including at the place of shipment, delivery, or manufacture of materials to be used in the Work, to see that the character of the Work conforms in every respect to requirements. The Contractor hereby agrees to furnish the inspectors with the necessary facilities and assistance for carrying out their duties. The Work shall be supervised by the Engineer and the inspectors to obtain the finished product in accordance with this Contract, and with as little inconvenience to the public as reasonably possible. Nothing in this section is intended to impose any liabilities of the Contractor or to relieve it of any of its obligations.

SECTION 11 - CONTRACTOR'S FOREPERSONS. The Contractor shall keep competent and experienced forepersons in charge of their particular classes of work. Whenever the Contractor is absent from any part of the Work, the Superintendent or Foreperson in charge of that particular Work shall receive and execute the instructions from the Engineer. Any forepersons or other employees on the Work that may be considered by the Engineer to be incompetent or disorderly shall be dismissed upon the request of the Engineer.

SECTION 12 - SUBCONTRACTORS. The Contractor shall not assign or subcontract any portion of this Contract without the consent of the City. The Contractor will be held responsible for the faithful completion of that part of the Work and the assignment or subcontracting will not relieve the Contractor of any of the obligations or requirements under the Contract.

SECTION 13 - DEFECTIVE WORK AND MATERIALS. The Contractor shall immediately remove and reconstruct or replace at their own expense all Work not in accordance with this Contract. The payment of the estimates shall not be considered as an acceptance of the Work included in the estimate before the final acceptance of the entire Work.

SECTION 14 - PUBLIC ACCESS/MATERIAL STORAGE. The Work shall begin at such places as the Engineer may direct and be expeditiously carried forward. The convenience of the public shall at all times be considered; no section of any street shall be entirely blocked to traffic unless it is absolutely necessary. When ordered by the Engineer, temporary crossings at such points as needed shall be provided by the Contractor at Contractor's expense. Insofar as practicable, materials may be stored in the streets, but the location and arrangements of the same must first be allowed by the Engineer. Obstructions must at all times be kept from fire hydrants. Whenever the Work in a block is completed, all surplus materials and debris shall be removed from that block.

SECTION 15 - SAFETY. The Contractor shall provide in written form a Company Safety Policy and a specific Job Safety Plan per fiscal year of the contract. Only after the City has no comment on the Policy and Plan can the Contractor begin work. The Contractor shall be wholly and solely responsible to establish, maintain, and operate a safe work site, per Federal, State, and Local regulations. The Contractor shall protect the entire Work until the final acceptance of the same. The Contractor shall be responsible for any act or omission by it or its employees or agents causing any injuries to persons or any damages to public or

private property. The Contractor shall erect and maintain barricades, lights and other safety devices.

SECTION 16 - NOTICE. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Mr. Donald F. Greeley, PE, PLS, Director
Department of Water Management
101 City Hall Plaza
Durham, NC 27701
The fax number is (919) 560-4479.

To the Contractor:

[Insert name and address]

The fax number is _____.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

SECTION 17 - INDEMNIFICATION. (a) To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Contract as a result of acts or omissions of Contractor or Subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections "a" above and "c" and "d" below --

"Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control pollution, or other environmental laws, regulations, ordinances, rules, or orders. -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items or materials that are the subject of this Contract).

"Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, but excludes the Contractor.

(c) Limitations of Contractor's Obligation. If this is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor

to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(d) Nothing in subsections "a", "b" or "c" above shall affect any warranties in favor of the City that are otherwise provided in this Contract. This section 17 is in addition to and shall be construed separately from any other indemnification provisions that may be in this Contract.

(e) Patent exception. Contractor shall not be liable under this Section 17 for Charges directly resulting from an alleged violation of patent rights where the City has specified the particular design, process, or invention as to which the patent infringement is alleged, and either (1) the Contractor had no reason to believe an infringement might occur or might be alleged, or (2) the Contractor had reason to have such a belief and gave immediate notice to the City of such possible infringement.

SECTION 18 - RELEASE OF CLAIMS. The City may at any time during the life of this Contract require a full release of all claims arising out of the Work and may withhold any estimate due the Contractor until such release is produced. The release shall be in the form reasonably satisfactory to the Engineer.

SECTION 19 - BONDS AND INSURANCE. The Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Automobile Liability Insurance, covering

- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, any limit.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina

- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:

City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701

- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

SECTION 20 - TIME. EXTENSION FOR COMPLETION OF WORK ASSIGNMENTS.

(a) The Contractor is to start the Work within ten (10) days after notice from the Engineer and shall expeditiously and diligently prosecute it with adequate forces to completion within **210 days** after the date of the Engineer's notice. In this Section 20, the date on which completion is due is referred to as the Contract Time. If the amount of work to be done under this Contract is increased, the Contract Time shall be extended as stated in Section 5 of this Contract.

(b) Liquidated Damages. The parties recognize that the City will suffer financial loss if the Work is not completed within the Contract Time (including adjustments and extensions, if any). They also recognize the delays, expense, and difficulty to both parties involved in proving or contesting the amounts of those losses. Instead of requiring proof of those amounts, it is agreed that Contractor shall be liable for and shall pay the City the amount of specified in the Contract title page, as liquidated damages, and not as a penalty, for each day after the Contract Time until completion. The amount stated as liquidated damages is agreed to be a reasonable estimate of the City's losses and expenses for delays, including inspections, engineering services, and administrative costs. If any part of those delays is caused by the City, liquidated damages shall not be charged for the portion of the delay time that was caused by the City but shall be charged for the portion not so caused. The City may collect liquidated damages by retaining moneys otherwise due Contractor in the amount of such damages, and by other legal means. The enforceability of this paragraph eliminates any claim by the City for actual damages for Contractor's delay in attaining completion. Nothing in this Section 20 shall reduce the City's rights under other sections of the Contract. To the extent allowed by law, if the Work is delayed but the delay is not caused solely by the City or the City's agent, the City shall extend the Contract Time by an amount equal to the delay, as the exclusive remedy of the Contractor for said delay. To the extent allowed by law, if the Work is delayed and the delay is caused solely by the City or the City's agent, the City shall extend the Contract Time by an amount equal to the delay, as the exclusive remedy of the Contractor for said delay. Notwithstanding anything in this Section 20 or elsewhere in the Contract to the contrary, it is agreed that nothing in this Section 20 or elsewhere in the Contract is intended to forbid or limit compensable damages for delays caused solely by the City or the City's agent. If the Contractor is entitled to compensable damages for a delay, the Contractor shall not receive an extension of Contract Time for the same delay. In this Section "City or City's agent" does not include prime contractors or their subcontractors.

SECTION 21 - SUSPENSION/TERMINATION OF WORK. (a) If the Work shall be abandoned by the Contractor, or if this Contract or any part thereof shall be assigned or subcontracted without the previous written consent of the City, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than is as herein specified, or if at any time the Engineer shall be of the opinion, and so certify in writing to the City Council that (1) the Work is unnecessarily or unreasonably delayed, or (2) that the Contractor is willfully violating any terms or conditions of this Contract, or (3) the Contractor is not executing the Contract in good faith, or (4) the Contractor is not making such progress in the execution of said Work as to indicate its completion within the time specified, then the City shall have the right to notify the Contractor to discontinue all work, either on the whole or on any part or parts thereof, to the extent specified by the City; and, upon said notification, the Contractor shall immediately discontinue Work in accordance with said instructions; and the City shall thereupon have the power and the right to enter upon said Work and take possession thereof and to take possession of and use such Devices ("Devices" being defined in this Section 21(a) as trucks, ditching machines, bulldozers, shovels, implements, tools and appliances, and all other means of construction of every description and any and all materials, both such as enter into the completed Work and such as are used in and about the same), which may be found on or along the line of the Work; and may procure other Devices, and employ by contract or otherwise, and such manner and at such prices as the City may determine, and to the extent which the City may deem necessary, to be used in, and to work at, the completion of the Work, and to carry out the terms of this Contract, or such part or parts of it as the City may have designated; also, to charge the expense of all said Work (including superintendence, labor, and Devices), to said Contractor; and the expense so charged shall be deducted and paid to the City out of such moneys as may be due or become due at any time thereafter to the Contractor under this Contract, or any part thereof. In case such expense is less than the sum which would have been payable under this Contract, if the same had been completed by the Contractor, it is agreed that the Contractor shall be entitled to receive the difference; and in case such expense shall exceed the sum which would have been payable under this Contract, if the same had been completed by the Contractor, then the Contractor shall pay the amount of such excess to the City on notice from the City of the excess so due. It is further agreed that neither an allowed extension of Contract Time nor the delivery and acceptance of any material called for by this Contract shall be held as a waiver by the City of the right to assume control of this Contract for the reasons herein set forth and in the manner provided. The City's failure to enforce its rights under this Contract shall not constitute a waiver of the right to assert that right afterwards.

(b) (i) The City may, at any time, terminate this Contract for its convenience and without cause by giving written notice to the Contractor and the Contractor's sureties on the performance bond and payment bond, if any. That notice will not be considered to be given pursuant to this Section 21(b) unless it states that it is given pursuant to Section 21(b) of this Contract. Upon receipt of that notice, the Contractor shall cease performance of the Contract, place no further orders and enter into no further subcontracts for materials, labor, services, or facilities which would have been entered into had the Contract not been terminated, and turn over possession of the site to the City, except as follows:

- 1) The Contractor shall take actions necessary for the protection and preservation of the

Work, and site, including those actions required by the Contract, except to the extent otherwise directed by the City;

2) The Contractor shall erect and leave in place barricades, lights, and other safety devices as are appropriate for the protection of the public, including those devices required by the Contract, except to the extent otherwise directed by the City.

(ii) Upon such termination, the City shall pay the Contractor for all Work performed on site (including all materials located on site) as of the termination date, except to the extent previously paid for. That Work shall be paid in accordance with the unit prices stated in the Proposal. If Work has been partially performed (including materials that are partially installed), and such Work is reasonably capable of being completed in accordance with the requirements of the Contract, the City shall pay the portion of the unit price multiplied by the percentage of completion attained for that Work

(iii) If the Contractor had ordered materials before receiving the notice of termination and cannot cancel the order without cost or charge, it shall immediately notify the City of the costs and charges (restocking, penalties, etc.) that the Contractor will be liable for if it refuses or returns the materials and the costs and charges that the Contractor will be liable for if it accepts the materials, and the Contractor will implement the City's decision with respect to whether to refuse, return, or accept those materials. The City shall reimburse the Contractor for the costs and charges that accrue because of the decision, to the extent that the Contractor communicated the nature of those costs and charges to the City before the City made its decision, provided that unit prices stated in the Proposal shall control for materials that are accepted. If the City's decision is for the Contractor to accept materials, the City shall become the owner of them upon delivery to the site or at such other place as the City shall specify.

(iv) In case of termination pursuant to this Section 21(b), the City shall pay the Contractor a termination fee of one hundred dollars (\$100.00) in addition to other amounts due pursuant to this Section 21(b).

(v) If the Contractor performs work pursuant to directions given by the City as described in subsection "i" of this Section 21(b) for the protection and preservation of the Work or of the public, the City shall pay the Contractor for such protection and preservation work to the extent that it is greater than the Contractor would have done during or at the end of a work day had the termination notice not been sent.

(vi) Except as stated in this Section 21(b), the Contractor shall not be entitled to any payment from the City because of termination, whether on the basis of overhead, profit, damages, or other economic loss, or otherwise. The Contractor agrees that the City's right to terminate pursuant to this Section 21(b) is entirely discretionary with the City.

SECTION 22 - PARTIAL AND FINAL PAYMENTS. Partial payments will be made on or before the 20th of each month for 95% of the work done during the previous month, as estimated by the Engineer. The remaining 5% will be held by the City of Durham as Retainage. The Retainage amount will be increased on the monthly Pay Request only up to

the point that 50% of the Project, based on cost, is complete. When the project is 50% complete, the owner shall not “retain any further retainage” from periodic payments due if: (1) the owner obtains written consent of surety; and (2) the performance of work is satisfactory up to the 50% completion point. Notwithstanding satisfactory performance by the contractor at the 50% project completion point, the owner may still retain up to 5% retainage on subsequent payments in order to retain an overall project retainage of no more than 2.5% through completion of the project. If, however, at any point the owner finds the contractor’s performance to be “unsatisfactory,” (whether at the 50% completion point or after), the owner may “reinstate” retainage from each subsequent periodic payment up to a 5% maximum to maintain the 5% total project retainage. Monthly payments shall only be paid when the Work is progressing in accordance with the terms of the Contract.

As soon as practicable after the acceptance of the work, the Contractor shall be issued a final estimate based upon the actual quantities of complete and accepted work. Within thirty days thereafter, such final estimate shall be considered for approval by the Engineer; and after it has been approved, the City shall pay the entire sum so found to be due hereunder, after deducting therefrom all previous payments and all amounts to be retained under the provisions of this Contract. All prior partial estimates may be subject to correction in the final estimate and payment. Neither the preparation of said final estimate nor its approval by the Engineer, nor the payment of said final estimate shall be construed to affect the right reserved by the City to reject the whole, or any portion, of the Work, should any of said Work be found inconsistent with any terms of the Contract, or should it be found that the preparation of said estimate or said approval of said payment otherwise was improperly done. The Contractor shall not be entitled to receive payment on partial or final estimates unless only first class workmanship and materials shall have been used. The inspection of the Work at any time shall not relieve the Contractor of the obligation to do sound and reliable work true to line and form. Any omission to disapprove of any Work by the Engineer at or before the time for any monthly or final estimate shall not be construed to be an acceptance of any Work not in compliance with the Contract. Work requiring skill in its execution shall be executed only by persons of training and experience in that particular kind of work.

SECTION 23 - REGULATORY REQUIREMENTS. The entire Work shall be done in accordance with all applicable regulations, ordinance, rules, and laws of any governmental body or entity. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (the Minority and Women Business Enterprises ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this Contract and/or other appropriate remedies in accordance with the provisions of that chapter, this Contract, and State law. The final version of all SDBE documents and information submitted by the Contractor and approved by the City of Durham are a legal and binding part of this Contract.

SECTION 24 - CORRECTION PERIOD. The Contractor at its own cost and expense will remedy all defects in workmanship and material which may be discovered within a period of one year after the final completion and acceptance of any Work assigned by the Engineer.

SECTION 25 - EMERGENCY WORK. The Contractor shall perform emergency Work as required from time to time by the City. (Such Work may include pavement replacement, property or driveway restoration, grading, clean-up, seeding, and mulching.) In such instances, the Engineer shall give the Contractor a written notice of each item of required work or incident. (Each severable part of that Work shall be considered a separate item or incident; e.g., if three driveways must be restored, then the restoration of each driveway will be a separate item or incident.) If the Contractor fails, within seventy-two (72) hours of receipt of that notice, to perform that Work, the City may do or cause some or all of that Work to be done. If the emergency Work is a non-pay item, then the City will charge all costs and expenses of that Work, plus the City's then-current overhead charge, to the Contractor, and deduct those amounts from any money that may be due the Contractor on the next monthly estimate (or following estimates if the next estimate is insufficient) or the final payment. If the emergency Work is a pay item, then the City will charge the costs and expenses of the Work to the work order, plus administrative and overhead charge of one hundred dollars per item of required work or incident, from any money that may be due the Contractor on the next monthly estimate (or following estimates if the next estimate is insufficient) of the final payment.

SECTION 26 – STREET APPURTENANCES. Deleted section

SECTION 27 - EQUAL BUSINESS OPPORTUNITIES ORDINANCE. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter provides, in part, “If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor’s alleged violations of its obligations under Chapter 26 and not to the Contractor’s alleged violations of other obligations.

SECTION 28 – PROMPT PAYMENT TO SUBCONTRACTORS. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the Engineer determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Engineer to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the

City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The Engineer may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

SECTION 29 – CONTRACT DOCUMENTS.

1. Contents of Contract – This Contract is supplemented by the following incorporated documents contained in the bidding document titled CONTRACT AND SPECIFICATIONS FOR Contract SR-63, Wilson Street to Ellerbe Creek Outfall Sanitary Sewer Repair and Replacement and Water Main Replacement, 2015, which carries a NCPE Seal dated August 11, 2015:
 - a. DEFINITIONS
 - b. GENERAL INSTRUCTIONS TO BIDDERS
 - c. PROPOSAL
 - d. ESTIMATED QUANTITIES,
 - e. SPECIFICATIONS
 - f. GENERAL REQUIREMENTS
 - g. SEWER MAIN MATERIALS SPECIFICATIONS
 - h. SEWER MAIN CONSTRUCTION
 - i. METHODS OF PAYMENT
 - j. SANITARY SEWER FLOW CONTROL
 - k. APPENDIX A, SDBE REQUIRMENTS AND CONSTRUCTION FORMS
 - l. APPENDIX B, SDBE REPORTING FORM
 - m. APPENDIX C, SALES TAX FORMS
 - n. APPENDIX D, CONTRACTOR SAFETY RECORD INFORMATION
 - o. APPENDIX E, SDBE SUBCONTRACTORS
 - p. APPENDIX F, GEOTECHNICAL REPORT FOR INFORMATIONAL USE
 - q. Addendum #1, dated September 10, 2015, 6 page total
 - r. Addendum #2, dated September 16, 1 page total
2. Exhibits, which are also incorporated into to this Contract and attached hereto, are as follows:
 - a. PERFORMANCE BOND AND PAYMENT BOND
 - b. CERTIFICATES OF INSURANCE pages ____ to _____, inclusive
 - c. POWER OF ATTORNEY
 - d. OFFICIAL BID PROPOSAL TABULATION
3. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed

- b. Work Change Directives
 - c. Change Order(s)
4. The documents listed in this SECTION 29 – CONTRACT DOCUMENTS, are made a part of this Contract and incorporated herein.
 5. There are no Contract Documents other than those listed above in this SECTION 29 CONTRACT DOCUMENTS.
 6. The Contract Documents may be amended, modified or supplemented only as agreed to by both parties in writing.
 7. Coordination of General Requirements, Special Requirements, Agreement and Technical Specifications:
 - a. All components of the Contract Documents are essential elements of the Contract between the Owner and Contractor, and notwithstanding the amending, modifying or supplementing as agreed to by both parties in writing, in case of conflict or contradiction among the general requirements, Special requirements, Agreement and technical Specifications, the following shall be the order of controlling authority as among these documents: the technical Specifications shall govern over the Agreement and the Agreement shall govern over the General and Special requirements.

SECTION 30 - CONTRACTOR CERTIFICATION. The Contractor hereby certifies that it has read each and every clause of the Contract, and fully understands the meaning of the same and agrees that it will comply with all their terms.

SECTION 31 - E-Verify Requirements. (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____

[The following officers may sign for the corporation: chairperson; president; chief executive officer; vice-president; assistant vice-president; treasurer; or chief financial officer.]

J.F. Wilkerson Contracting Company, Inc.

By: _____ (SEAL)

Title of officer: _____

State of _____ ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is

(strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of

[City staff – Insert the name of the Contractor here], a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the _____ day of _____, 20_____.

My commission expires: _____

_____ Notary Public

PERFORMANCE BOND AND PAYMENT BOND

Date of Contract: _____

Contract Name and Number: _____

Name of Principal (Name of Contractor): _____

Name of Surety: _____

Name and Address of Surety's NC Resident Agent: _____

Contracting Body: CITY OF DURHAM, a North Carolina municipal corporation

Amount of Performance Bond (in words and figures): _____
_____ dollars (\$_____)

Amount of Payment Bond: same dollar amount as the dollar amount of Performance Bond.

Date of Execution of these Bonds: _____

* * * * *

KNOW ALL PERSONS BY THESE PRESENTS, that we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, and successors, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain Contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue. As used hereinabove, "modifications" shall include, without limitation, changes (including, without limitation, changes granting extensions of

time) and additions to with respect to the Work, scope of work, and specifications.

* * * * *

KNOW ALL PERSONS BY THESE PRESENTS, that we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain Contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the Work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue. As used hereinabove, "modifications" shall include, without limitation, changes (including, without limitation, changes granting extensions of time) and additions to or with respect to the Work, scope of work, and specifications.

* * * * *

The Performance Bond and the Payment Bond are being combined here only for purposes of convenience in signing and acknowledging, and the obligations of the Principal and of the Surety are the same as if the bonds were on separate documents. Each bond is in the dollar amount stated above, and the amounts of these bonds are not combined. The Surety agrees that both of these bonds are fully binding on it whether or not the Principal executes these bonds. These bonds are given pursuant to Article 3 of Chapter 44A of the NC General Statutes.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument (for both the Performance Bond and the Payment Bond) under their several seals on the date of execution indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(name of Principal)

ATTEST:

Secretary By: _____

President

(Affix corporate seal)

(name of Surety)

(name of attorney in fact)

(Affix corporate seal)

(Note: If you use a raised corporate seal, press hard enough to make it legible.)

ACKNOWLEDGEMENT OF CONTRACTOR'S EXECUTION OF CONTRACT,
PERFORMANCE BOND AND PAYMENT BOND

State of _____ County of _____

I, _____, a notary public for the aforesaid county and state, certify that _____ personally appeared before me this day, and acknowledged that he or she is _____ Secretary of _____, a corporation, and that by authority duly given and as the act of the corporation, the foregoing (1) Contract with the City of Durham and (2) Performance Bond and Payment Bond with respect to the Contract, were signed in its name by its _____ President, whose name is _____, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary.

This the ____ day of _____, _____.

NOTARY PUBLIC

My commission expires: _____

ACKNOWLEDGEMENT OF SURETY'S EXECUTION OF
PERFORMANCE BOND AND PAYMENT BOND

State of _____ County of _____

I, _____, a Notary Public for said county and state, certify that _____, personally appeared before me this day and acknowledged that he or she is Attorney in Fact for _____, the Surety named in the foregoing Performance Bond and Payment Bond, in both of which bonds the contracting body is the City of Durham, and that he or she executed said bonds, under the seal of said Surety, on behalf of said Surety.

This the ____ day of _____, _____.

NOTARY PUBLIC

My commission expires: _____

CERTIFICATES OF INSURANCE ATTACHMENT

POWER OF ATTORNEY ATTACHMENT

CERTIFICATE OF FINANCE OFFICER

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This _____ day of _____, 20_____.

FINANCE OFFICER, CITY OF DURHAM

NON-COLLUSION STATEMENT BY CONTRACTOR

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, _____ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this bid, proposals or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature of Contractor _____