

S T A T E

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SPECIAL PROVISION

REGARDING

WATER QUALITY AND STORM WATER PERMITS

Scope

The conditions of this Special Provision apply to all construction on this project pursuant to the following:

1. Section 404 of the Federal Clean Water Act (33 U.S.C. §1344), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing permits for discharges of dredged or fill material into waters of the United States in 33 CFR Part 323; and
2. The Tennessee Water Quality Control Act (T.C.A. §69-3-101, et seq.) and all implementing regulations, including without limitation the Rules of the Tennessee Department of Environment and Conservation governing NPDES permits in Chapter 1200-4-10, and Aquatic Resource Alteration permits in Chapter 1200-4-7; and
3. Section 26a of the TVA Act of 1933 as amended (49 Stat. 1079, 16 U. S. C. sec. 831y1.) and all implementing regulations, including without limitation the regulations of the Tennessee Valley Authority governing construction in the Tennessee River System in 18 C.F.R., Part 1304; and
4. The Tennessee Wildlife Resources Agency Reelfoot Lake Watershed Management permit program (T.C.A. section 70-5-1.), and all implementing regulations, including without limitation regulations authorizing any activity, practice, or project which has or is likely to have the effect of diverting surface or subsurface water from the Lake or have the effect of draining or otherwise removing water from Reelfoot Lake; and
5. Coast Guard Bridge Permit (USCG) (Section 9 of the Rivers and Harbors Appropriation Act of 1899) and all implementing regulations, including but not without limitation for projects which impact streams deemed navigable by the U.S. Coast Guard.

Responsibility

It is understood and agreed that the Contractor assumes all responsibilities of the permittee as indicated in the permit that relates to protection of the "waters of the United States" and/or "waters of the State of Tennessee."

It is also understood and agreed that the Contractor shall be responsible for obtaining any additional permits required by the Contractor's method of construction, including without

limitation haul roads, temporary channels or temporary ditches, or off-site waste and/or borrow areas.

It is also understood that the Contractor shall be responsible for implementing the provisions of the Water Quality (including, but not limited to, TDEC ARAP, USACE 404, TVA Section 26a, Coast Guard, TWRA) and Storm Water [including, but not limited to, National Pollution Discharge Elimination System (NPDES), Statewide Stormwater Management Plan (SSWMP)] Permits and requirements that pertain to construction activities.

The Contractor by signing this contract is indicating that the Contractor has reviewed a copy of the permit provisions, including NPDES Permit provisions at <http://www.tdot.state.tn.us/construction/permits/npdes.pdf>, the site specific SWPPP, the contract plans, Standard Specifications and contract Special Provisions and finds the permit requirements and erosion prevention and sediment control (EPSC) procedures to be reasonable, workable, and binding.

It is also understood that the Contractor shall not be released from the project site responsibilities under the NPDES permit provisions until the Notice of Termination (NOT) is submitted to TDEC by the TDOT Regional Construction Supervisor. The NOT is a certification that the construction project site is permanently stabilized and that all construction related discharges have ceased. This means that the use of EPSC measures to alleviate concerns of surface erosion and transport of sediment to surface water conveyances or to waters of the state is no longer necessary. Furthermore, it means that permanent controls, hard surfaces and/or vegetation, employed at the site are deemed adequate to prevent erosion and sediment transport and no other potential sources of construction-related pollution are on the project.

It is also understood that the Contractor shall not be released from any warranty provided for EPSC plantings, including sod and trees. If the entire project is complete as outlined in **Subsection 105.15** of the **Standard Specifications**, the Contractor shall be required to supply a performance bond as outlined in **Subsection 802.15** of the **Standard Specifications** to cover any warranty for EPSC plantings.

NPDES Permit Required Action

The Contractor (or their representative) shall accompany the EPSC inspector (TDOT personnel or TDOT hired consultant) on all EPSC inspections of the entire construction project including permitted locations and potentially impacted streams as well as attend all QA/QC Project Assessments.

EPSC Inspections shall be conducted as required in the most current TN Construction General Permit.

EPSC inspections shall be performed on the schedule established in the TN Construction General Permit until the site is permanently stabilized to determine if the permit requirements are being met. Where sites or portion(s) of construction sites have been temporarily stabilized, or runoff is unlikely due to winter conditions (e.g. site covered with snow or ice), such inspection only has to be conducted once per month until thawing or precipitation results in runoff or construction activity resumes. Written notification of the intent to change the inspection frequency and the justification for such request must be submitted to the TDOT Project Supervisor and the TDEC Central Office before proceeding.

An individual representing the Contractor, who holds a current TDEC “*Fundamentals of Erosion Prevention and Sediment Control Level I*” certification shall accompany the EPSC inspector on all required EPSC inspections. The Contractors project supervisor(s) shall also hold

a current TDEC “*Fundamentals of Erosion Prevention and Sediment Control Level I*” certification. Proof of required personnel training for the individual(s) shall be provided to the TDOT Project Supervisor prior to beginning of construction.

The TDOT EPSC inspector shall document all deficiencies on the required TDOT EPSC Inspection Report form (provided in the SWPPP). The Contractor (or their representative) shall sign the TDOT EPSC Inspection Report form and any supporting documentation indicating that he is in agreement with the report, recommendations and repair schedule as stated within the documentation.

Additionally, the Contractor shall make necessary maintenance and repairs relative to deficiencies in these permit conditions or requirements within twenty-four (24) hours after an inspection identifies the maintenance or repair need, and/or when directed to do so by the TDOT Project Supervisor, unless conditions make a particular activity impracticable. Any such conditions that make immediate repairs impracticable shall be documented and provided to the TDOT Project Supervisor, via the inspection report, and be accompanied by an expected repair schedule based on forecasted weather conditions.

The Contractor further agrees that he will execute two (2) copies of the Notice of Intent (NOI) form of the permit (provided by the Department), indicating his acceptance of the stipulations contained therein. The Contractor further agrees, that should he fail to execute said copies and return them to the TDOT Construction Division within ten (10) calendar days after submittal of the contract proposal to him, that the Department may at its discretion cancel the award with the Contractor forfeiting his bid bond.

Further, the Contractor agrees to review the site specific Stormwater Pollution Prevention Plan (SWPPP) that will be made available prior to or at the pre-construction conference, for any additional EPSC requirements. The Contractor shall sign and submit two copies of the SWPPP signature page (provided by the Department within the site specific SWPPP). The Contractor may submit for review and approval changes/revisions to the SWPPP to better prevent erosion and sediment transport at any time after contract execution. Rejection of any submittals does not relieve the contractor of any liability for appropriate Best Management Practices (BMPs).

If at any time during this contract, the requirements for the Water Quality Permits and/or the Storm Water Permits for Construction Related Activities are changed/revise/d updated, the Contractor shall be notified in writing by the Department of such requirements. The Contractor shall comply with the new requirements within thirty (30) days of the Department notification.

If at any time the Contractor becomes aware that sedimentation is occurring or has occurred in streams impacted by the specified project, the Contractor shall immediately notify the TDOT Project Supervisor to evaluate the EPSC measures employed. A determination of the cause for sedimentation will be made by the Department. The Contractor shall immediately repair or replace defective EPSC measures, and install, as applicable, additional or other EPSC measures with the goal of eliminating future sedimentation. Once a remediation plan is provided by the Department, the Contractor shall, within twenty-four (24) hours after notification, begin the remediation as required. Based on the cause of sedimentation, the Department will determine if the cost of remediation will be performed at the Contractor’s expense.

Failure to Comply

In the event a Notice of Violation (NOV) or Order pursuant to the Tennessee Water Quality Control Act or the Federal Clean Water Act is issued on this project, any and all fines will be the

sole responsibility of the Contractor as outlined in **Subsection 107.01** of the **Standard Specifications for Road and Bridge Construction**.

Failure of the Contractor to comply with this Special Provision or take immediate corrective actions required within twenty-four (24) hours (unless documented conditions make a particular maintenance or repair activity impracticable immediately) shall be reason for the TDOT Project Supervisor to suspend all other work on the Project, except erosion prevention and sediment control (EPSC) and traffic control, applying non-refundable deductions of monies from the Contract per calendar day from monies due to the Contractor for any EPSC work on the Project. This deduction can be made for each location, as determined by the TDOT Project Supervisor, for each calendar day that the deficiency is allowed to remain and charged as item description "*Failure to Comply with Permit Deduction*". A deduction shall be made from monies due the Contractor, not as a penalty, but as liquidated damages, as indicated in **Subsection 108.07** of the **Standard Specifications for Road and Bridge Construction January 1, 2015**, as amended.

If the Contractor does not make necessary corrections/adjustments in a timely manner as required above, the Department will implement the provisions of **Subsection 209.07 and Subsection 109.08** of the **Standard Specifications for Road and Bridge Construction** that provides for the Department making repairs and recovering the costs thereof from the Contractor.

The Department will not participate in any payment or reimbursement for fines and will not authorize time extensions due to delays in project progress for work stoppage, to remedy the violations stated within the NOV, required by the TDOT Project Supervisor as stated in **Subsection 105.01** of the **Standard Specifications for Road and Bridge Construction**.