City of Greensboro
North Carolina

Water Resources Department

Request for Statement of Qualifications for Design Build Services for the Townsend Water Treatment Plant Advanced Treatment Facility

ADDENDUM #3

November 10, 2025

1. **Mandatory Project Information Meeting (pre-submittal meeting and site visit)**
   a. Attendance list is attached.

2. **SECTION 4: SOQ DOCUMENTATION REQUIREMENTS;**
   4.2 SOQ Format Requirements;
   4.2.3 The body of the SOQ, when printed, shall be limited to a maximum of fifty (50) single-sided pages;
   a. The **only** documentation that is **not** included in the page count is the following:

   i. Statement of DB Team's Ability to Provide a Performance and Payment Bond
   ii. Statement of DB Team's Ability to Meet the Owner's Insurance Requirements;
   iii. Corporate Structure Questionnaires and required forms;
   iv. Resumes of Key Team Members may be included in an Appendix;
   v. Front and Back covers, provided that they contain no substantive content.
   vi. Exhibit H – Local Preference Policy – Eligible Bidder Certification
   vii. Section dividers or tabs

<add the following subsection to the list immediately above>

viii. Statement of DBTeam's exceptions to

- **DBIA 545 – PDB Agreement – Greensboro Template (Exhibit I of Section 5: List of Attached Exhibits) and/or**
- **DBIA 535 – General Conditions – Greensboro Template (Exhibit J of Section 5: List of Attached Exhibits)**

3. **SECTION 5: LIST OF ATTACHED EXHIBITS**

A. Scope of Work
B. Preliminary Engineering Report Technical Memo (attached separately)
C. Performance and Payment Bond Instructions

D. Insurance Requirements and Instructions
E. Corporate Structure Questionnaire
F. M/WBE Requirements
G. Owner's Additional Requirements
H. Local Preference Policy – Eligible Bidder Certification

<add the following subsections to the list immediately above>

I. DBIA 545 – PDB Agreement – Greensboro Template
a. Exhibit A - Owner's Project Criteria
J. DBIA 535 – General Conditions – Greensboro Template

4. DBIA 545, DBIA 535, and Owner's Project Criteria are attached.

5. This is the final addendum, no questions were received.

END OF ADDENDUM

Name	Initials for attendance	Company Name	Services	Email address	
Brad Adams	BA	Adams Robinson	Design Builder Contractor		
Dustin Downs	DMD	Adams Robinson	Design Builder Contractor		
Brandon Campbell		Adams Robinson	Design Builder Contractor	Bcampbell@adamsrobinson.com	
Kyle Massey		Black and Veatch	Design Builder Engineer	MasseyK@bv.com	
Jeff Thompson		Black and Veatch	Design Builder Engineer	ThompsonJ@bv.com	
Savannah Shupe	SS	GFT		Sshupe@gftinc.com	
David Parker		GFT		daparker@gftinc.com	
Kate Dotten-Holder		Harper Contractors		Kdotten@HarperGC.com	
Emily Skibenes		Harper Contractors	Design Build Contractor	Eskibenes@HarperGC.com	
Amir Alansari	✓	Stantec Consulting	Design Builder Engineer	amir.alansari@stantec.com	
Linda Pass	✓	Stantec Consulting	Design Builder Engineer	linda.pass@stantec.com	
Ryan Capelle	✓	PC Construction	Design Builder Contractor	rcapelle@pcconstruction.com	
Joe DeHart	✓	PC Construction	Design Builder Contractor	jdehart@pcconstruction.com	
Raul Valdez	✓	PC Construction	Design Builder Contractor	rvaldez@pcconstruction.com	
Frank Gonzalez	FG	Inframark	INTEGRATOR	frank.gonzalez@inframark.com	
DAVID RAMIREZ	DR	BBFosterConsulting	Inspections	dr@bbfosterconsulting.com	
Rene Paz	RP	Cisco Site Services	Demolition	RPaz@ciscositeservicllc.com	
Francisco Gomez	FJ	Cisco Site Services LLC	Demolition	Cisco@ciscoSiteServices.com	
Corbin Jenkins	CJ	GMC	Engineering	corbin.jenkins@gmcnetwork.com	
Daniel Hall	DH	GMC	DB Engineer	daniel.hall@gmcnetwork.com	
Colin Hughes	CH	GMC	ENGINEERING	colin.hughes@gmcnetwork.com	

Name	Initials for attendance	Company Name	Services	Email address	
Brock Wortman	RW	Haskell	Design Builder Contractor	brock.wortman@haskell.com	
Katie Walker		Jacobs	Design Builder Engineer	katie.walker@jacobs.com	
Daniel Austria		Crom Corp		Daustria@cromcorp.com	
Chris Porter		CMT Coatings		Chris@cmtcoatings.com	
Kelly Lee		Crom Corp		klee@cromcorp.com	
Matthew Morin		Garney	Design Builder Contractor	mmorin@garney.com	
Doug McKa	DM	Garney	Design Builder Contractor	douglas.mcka@garney.com	
Matthew Kiefer	MK	Arcadis	Design Builder Engineer	Matthew.Kiefer@arcadis.com	
Amanda Berger	AB	Arcadis	Design Builder Engineer	Amanda.Berger@arcadis.com	
Michael Pilutti	MP	Arcadis	Design Builder Engineer	Michael.Pilutti@arcadis.com	
Josh Brown	JB	Cooper Electric	ELECT. CONTRACTOR	Josh.brown@coopereic.com	
Tharanga Dissanayaka		ECS Southeast		Tdissanayaka@ecslimited.com	
Bill Ryder		TA Loving		Bryder@taloving.com	
Odysseus Ur Chavis II		OU Chavis Contracting	GC	chaviso06@gmail.com	
Reed Barton		CDM Smith	Design Builder Engineer	bartonr@cdmsmith.com	
Anish Luthra		CDM Smith	Design Builder Engineer	luthraa@cdmsmith.com	
Darric Beach	DMB	Crowder Construction	Design Builder Contractor	Dbeach@crowderusa.com	
Andrew Calvert		Crowder Construction	Design Builder Contractor		
Mike Prillaman	MP	Crowder Construction	Design Builder Contractor	Mprillaman@crowderusa.com	
Jeri Covington		Kleinfelder		Jcovington@kleinfelder.com	

Name	Initials for attendance	Company Name	Services	Email address	
Kelvin Currie	KC	Allsystems Restored	M.E.P's	Kelvin@Allsystemsrestored.com	
~~DERRICK GILES KELVIN CURRIE~~	DG	SAMR	MEP	DGILES@SAMRBA.COM	
Nick Sacha		HDR	DA		
Ron Hargrove	RH	HDR	DA	ron.hargrove@hdrinc.com	
Matt Nichols	MAN	CROM	Engineer	mnichols@cromcorp.com	
ODysseus CHAUS	OUL	O.U. CHAUS Contracting	GC	OCHAUS@TRIAD.RR.COM	

Progressive Design-Build Agreement for Water and Wastewater Projects

Modifications to this document are as follows:

1. *Deletions from the DBIA Document No. 545 are shown with a strikethrough and screened text.*
2. *Additions and modifications to the DBIA Document No. 545 are shown in italics and underlined.*

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2026, by and between the following parties, for services in connection with the Project identified below:

OWNER:
City of Greensboro
Water Resources Department
2602 South Elm-Eugene Street
Greensboro, NC 27406

DESIGN-BUILDER:

PROJECT:
Townsend Water Treatment Plant Advanced Treatment Facility

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Design-Builder's Services and Responsibilities

1.1 General Services.

1.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

1.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

1.2 Phased Services.

1.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

1.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 1.3.

1.2.3 *Additional Design Services. The Owner reserves the option to have the Design-Builder provide additional design services after completion of Phase 1 services pursuant to Section 1.3.2.2 or Section 1.3.2.3.ii, at rates set forth in this Agreement. This work may include re-design any time throughout the duration of the Project, including during Phase 2 services.*

1.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

1.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

1.3.1.1 The Contract Price that may be based on a Lump Sum or Design-Builder's Fee and Cost of the Work, with an option for a GMP, which shall be the sum of:

i Design-Builder's Fee as defined in Section 6.4.1 hereof;

ii The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.2 hereof and;

iii *Owner's Contingency as defined in Section 6.6.3 hereof*;

iv If applicable, any prices established under Section 6.1.3 hereof;

1.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Proposal;

1.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

1.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

1.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 If applicable, Performance Incentives;

1.3.1.11 The time limit for acceptance of the Proposal; and

1.3.1.12 ~~An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.~~ *A permit matrix showing the anticipated required permits and governmental approvals and which party bears responsibility to obtain is shown in Exhibit A – Owner's Project Criteria*.

1.3.2 Review and Adjustment to Proposal.

1.3.2.1 *Review of the Proposal.* After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

1.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once

the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

1.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section ~~1.3.2.3~~ *1.3.2.2* above;

ii ~~Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or~~ *Owner, in its discretion, may notify Design-Builder to proceed with the completion of all Phase 1 Services as stated in Exhibit B – Scope of Services. Design-Builder shall be entitled to payment in accordance with Section 6.1.1 for the Phase 1 Services; or*

iii Owner may terminate this Agreement for convenience in accordance with Article 8*.1* hereof; ~~provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.~~

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section ~~1.3.2.4 ii~~ *1.3.2.3(ii)*. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall ~~not~~ be entitled to the payment provided for in Section ~~8.2~~ *8.1* hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section ~~1.3.2.4~~ *1.3.2.3* within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section ~~1.3.2.4(iii)~~ *1.3.2.3(iii)*, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract");

2.1.2 The Contract Price Amendment referenced in Section ~~1.3.2.3~~ *1.3.2.2* herein or the Proposal accepted by Owner in accordance with Section 1.3 herein;

2.1.3 This Agreement, including all exhibits ~~(list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices or exhibit detailing offsite reimbursable personnel)~~ but excluding, if applicable, the Contract Price Amendment;

2.1.4 *DBIA Document 535, Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")* ~~The General Conditions of Contract~~;

2.1.5 Construction Documents prepared and approved in accordance with Section ~~1.4~~ *2.4* of the General Conditions of Contract;

2.1.6 Exhibit A, Owner's Project Criteria

2.1.7 Exhibit B, Scope of Services; and

2.1.8 The following other documents, if any:

2.1.8.1 *Exhibit C – Insurance Requirements for Design-Builder*

2.1.8.2 *Exhibit D – Forms*

2.1.8.3 *Exhibit E – State/County Sales/Use Tax Statement*

2.1.8.4 *Exhibit F – Project Schedule (Reserved for Phase 2 Services)*

2.1.8.5 *Exhibit G – Guaranteed Maximum Price Exhibit (Reserved for Phase 2 Services)*

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. (Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 *Reserved.* ~~Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.~~

4.2 *Reserved.* ~~Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on Owner's obligation to provide the indemnity set forth in Section 4.5 herein.~~

4.3 *Reserved.* ~~Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:~~

4.3.1 *Reserved.* ~~Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on Owner's obligation to provide the indemnity set forth in Section 4.5 herein, and~~

4.3.2 *Reserved.* ~~Owner agrees to pay Design-Builder the additional sum of Dollars ($_____) as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents or third parties.~~

4.4 *Reserved.* ~~Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.~~

4.5 *Reserved.* ~~Owner's Indemnification for Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.~~

4.6 *Design-Builder's Indemnification for Use of Work Product. If the Design-Builder completes design of the project pursuant to Section 1.3.2.2 or Section 1.3.2.3(ii) or is the sole responsible party to perform all additional design services pursuant to Section 1.2.3, Design-Builder is required to indemnify Owner based on the use of the Work Product. Design-Builder shall defend, indemnify, and hold harmless Owner from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, to the extent resulting from negligent errors or omissions present in the Work Product, to the fullest extent permitted by applicable law.*

4.7 *Owner's Indemnification Upon 100% Project Design Completion. Owner has an express understanding that its alteration of the Work Product without the involvement of Design-Builder, is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier. Any portions of the work not altered remain the sole responsibility of the Design-Builder.*

4.8 *All Work Product produced and for which the Owner has made payment for that work is owned by the Owner and required to be transferred to the Owner upon request. Liability and indemnification from the use of that Work Product by the Owner will be pursuant to Sections 4.6 and 4.7. Notwithstanding the foregoing, Design-Builder retains ownership of any pre-existing intellectual property used in the preparation of the Work or incorporated in the Work.*

Article 5

Contract Time

5.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than *to be determined as part of the GMP Proposal* (***TBD***) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

~~*[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1.]*~~

~~☐ The parties agree that the definition for Substantial Completion set forth in Section 1.2.19 of the General Conditions of Contract is hereby modified to read as follows:~~

~~"*Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official, if a Temporary Certificate of Occupancy is applicable to the Project."~~

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: (Insert any interim milestones ("Scheduled Interim Milestone Dates") for portions of the Work with different scheduled dates for Substantial Completion.)

5.2.3 ~~Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.~~ Final Completion is the date when all Work is complete

pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by (*to be determined as part of the GMP Proposal*) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner *to be determined as part of the GMP Proposal* Dollars ($***TBD***) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)*

[The parties may want to consider the following supplemental language within Section 5.4 if they want to assess liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 5.2.3 should be deleted and the language below should be checked and completed.]

☒ Design-Builder understands that if Final Completion is not achieved within ***TBD*** days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within ***TBD*** (___) days of Substantial Completion, Design-Builder shall pay to Owner *to be determined as part of the GMP Proposal* Dollars ($***TBD***), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following.]

☐ Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not achieved. Owner shall be able to recover damages from Design-Builder to the extent it can demonstrate that said actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing in no event shall Design-Builder's liability for actual damages for delays exceed _____ Dollars ($_____).

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.
[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]

☒ Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be *to be determined as part of the GMP Proposal* Dollars ($***TBD***).

5.6 *Reserved.* Early Completion Bonus. If Substantial Completion is attained on or before _____ _____(_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"),

~~Owner shall pay Design-Builder at the time of Final Payment under Section 7.4 hereof an early completion bonus of _____ Dollars ($_____) for each day that Substantial Completion is attained earlier than the Bonus Date.~~ *~~(If a GMP is not established upon execution of this Agreement, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly.)~~*

~~[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]~~

☐ ~~Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is _____ Dollars ($_____).~~

~~[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]~~

☐ ~~In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall be entitled to an increase in the Contract Price providing that: (i) said events must exceed _____ cumulative days before Design-Builder is entitled to additional compensation; and (ii) said additional compensation shall be limited to:~~

~~[Check one box only.]~~

☐ ~~$_____ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.~~

~~or~~

☐ ~~the direct costs and expenses Design-Builder can demonstrate it has reasonably actually incurred as a result of such event.~~

5.7 Owner's Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.7.1 Owner shall have a minimum of *14* days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.7.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within *14* days of receipt by Owner.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of ***TBD*** *Dollars* ($____) *on a not to exceed, cost reimbursable basis at the categorical rates set forth in Exhibit B, Attachment 1* for the Phase 1 Services *plus Design-Builder's Fee (as defined in Section 6.4 hereof)*, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.1.1 *Owner's Contingency. The sum associated with the Phase 1 Services includes an Owner's Contingency in the amount of **TBD** Dollars ($) which is available for the Owner's exclusive use. Funds not expended from the Owner's Contingency will be retained by the Owner if not used and not be considered in Savings under Section 6.6.4 hereof.*

6.1.1.2 *Allowance Item No. 1 – Long Lead-Time Equipment. The sum associated with the Phase 1 services includes an Allowance Value in the amount of **TBD** Dollars ($) as set forth in Exhibit B, Attachment 2 which includes an estimate for both the Allowance Item and Design-Builder's Fee. Use of the allowance shall be authorized as defined in Section 6.7 hereof. Owner shall pay the Design-Builder in accordance with Article 6 of the General Conditions for the procurement of long lead, time critical equipment for the Project a sum equal to Design-Builder's Fee (as defined in Section 6.4 hereof), plus the Cost of the Work (as defined in Section 6.5 hereof). All costs associated with the design, specification, selection, coordination, etc. for this Allowance Item are deemed to be included in the Phase 1 services sum, as defined in Section 6.1.1, and not subject to adjustment or included in the Allowance Value.*

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 6.2 hereof or in the Contract Price Amendment, or equal to Design-Builder's Fee (as defined in Section 6.4 hereof) plus the Cost of the Work (as defined in Section 6.5 hereof), subject to any GMP established in Section 6.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

6.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis:

6.2 *Reserved.* ~~Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars ($) ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.~~

6.3 *Reserved.* ~~Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:~~

6.3.1 *Reserved.* ~~For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.~~

6.3.2 *Reserved.* ~~For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:~~

~~***[Check one box only.]***~~

~~☐ No additional reduction to account for Design-Builder's Fee or any other markup.~~

~~or~~

~~☐ An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.~~

6.4 Design-Builder's Fee.

6.4.1 Design-Builder's Fee shall be:

~~*[Choose one of the following:]*~~

~~☐ _____ Dollars ($ _____), as adjusted in accordance with Section 6.4.2 below.~~

~~or~~

☒ ***TBD*** percent (_____%) of the Cost of the Work, as adjusted in accordance with Section 6.4.2 below.

6.4.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ***TBD*** percent (___ %) of the additional Costs of the Work incurred for that Change Order, ~~plus any other markups set forth at Exhibit _____ hereto.~~

6.4.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

~~*[Check one box only.]*~~

~~☐ No additional reduction to account for Design-Builder's Fee or any other markup.~~

or

☒ An amount equal to the sum of: (a) ***TBD*** percent (__%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); ~~plus (b) any other markups set forth at Exhibit ____ hereto applied to the direct costs of the net reduction.~~

6.5 Cost of the Work *for Phase 2*.

6.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.5.1.1 Wages (at the Billing Rates established in the GMP) of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site. ~~provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.~~

6.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work *at rates set forth in Exhibit G to this Agreement*.

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified *with rates set forth* in Exhibit _G_ and performing the function set forth in said Exhibit. ~~The~~

~~reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a _____ percent (_____%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.~~

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof *However, the costs associated with 6.5.1.4 based on wages and salaries paid to employees of Design-Builder covered under sections 6.5.1.2 and 6.5.1.3 shall be included in the rates set forth in Exhibit G to this Agreement*.

~~[In lieu of the language in Section 6.5.1.4 above, Design-Builder and Owner may want to include the following language:]~~

☐ ~~A multiplier of _____ percent (_____%) shall be applied to the wages and salaries of the employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.~~

6.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.5.1.8 Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.5.1.10 Costs of removal of debris and waste from the Site.

6.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of ~~facsimile transmissions, long-distance telephone calls,~~ postage and express delivery charges, telephone service, *and* photocopying ~~and reasonable petty cash expenses~~.

6.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of

the Work. *Billing rates for common construction equipment are hereby established in the Phase 2 GMP.*

6.5.1.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.5.1.14 All fuel and utility costs incurred in the performance of the Work.

6.5.1.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work. *Design-Builder is responsible for paying all taxes required to be paid by Design-Builder in accordance with the Laws and Regulations of the place of the Project which are applicable. Design-Builder shall be reimbursed separately for certain sales or use taxes paid to the State of North Carolina for building materials, supplies, fixtures and equipment that become a part of the Project (N.C.G.S. 105-54). Therefore, sales tax should not be included in Contractor's Cost of Work for building materials which will annex to, affix to, or in some manner become part of a building, infrastructure, or appurtenance which is being erected, altered, or repaired as part of this Agreement. Owner's exemption for sales and use taxes do not apply to construction tools, machinery, equipment or other property purchased by or leased by the Contractor, or to supplies or materials which are not incorporated into the work. Sales or use taxes paid to states other than North Carolina are not eligible for reimbursement referenced above and should be included in the Cost of Work.*

6.5.1.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.5.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.5.1.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.5.1.20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.5.1.21 Accounting and data processing costs related to the Work.

6.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

[Design-Builder and Owner may want to consider adding the following Section 6.5.1.23 to address the payment of warranty work:]

☐ Owner and Design-Builder agree that an escrow account in the amount of _____ _____ Dollars ($_____) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP,

~~Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.~~

6.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

6.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.1.1, 6.5.1.2 and 6.5.1.3 hereof.

6.5.2.2 Overhead and general expenses, except as provided for in Section 6.5.1 hereof, or which may be recoverable for changes to the Work.

6.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

6.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

~~***[The parties shall comply with the following Section 6.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 6.5 shall be deemed inapplicable and compensation to Design-Builder shall be based on those fees and costs identified in the balance of this Article 6.]***~~

6.6 The Guaranteed Maximum Price.

6.6.1 Design-Builder guarantees that it shall not exceed the GMP of *to be defined in the GMP Proposal* Dollars ($***TBD***). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 1.3 above, to ensure that the basis for the GMP is well understood.)*

~~***[In lieu of Section 6.6.1, Owner and Design-Builder may want to include the following language.]***~~

~~☐ Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars ($_____). Documents used as basis for the GMP shall be identified as the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of _____ Dollars ($_____), and as set forth in the Contract Price Amendment ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth in Section 6.3 herein.~~

6.6.2 *Design-Builder's Contingency.* The GMP includes a Contingency in the amount of *to be defined in the GMP Proposal* Dollars ($***TBD***) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of

Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The *Design-Builder's* Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents*. Design-Builder shall only charge against the Design-Builder's Contingency with Owner's approval, which shall not be unreasonably withheld.* Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the *Design-Builder's* Contingency, including all reasonably foreseen uses or potential uses of the *Design-Builder's* Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the *Design-Builder's* Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the *Design-Builder's* Contingency.

6.6.3 *Owner's Contingency. The GMP includes an Owner's Contingency in the amount of (to be defined in the GMP Proposal)_ Dollars ($_TBD_) which is available for the Owner's exclusive use. Funds not expended from the Owner's Contingency will return to the Owner at the end of the project and not be considered in Savings under Section 6.6.4 hereof.*

6.6.4 Savings.

6.6.4.1 If the sum of the actual Cost of the Work and Design-Builder's Fee, (and, if applicable, any prices established under Section 6.1.3 hereof) is less than the GMP *excluding any remaining Owner's Contingency under Section 6.6.3 hereof,* as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

~~*[Choose one of the following:]*~~

☒ ***TBD*** percent (____%) to Design-Builder *with a mutually agreeable distribution to designated subcontractors as determined in the GMP Proposal* and ***TBD*** percent (____%) to Owner.

~~or~~

~~☐ The first _____ Dollars ($_____) of Savings shall be provided to (choose either Design-Builder or Owner) _____, with the balance of Savings, if any, shared _____ percent (_____%) to Design-Builder and _____ percent (_____%) to Owner.~~

6.6.4.2 Savings shall be calculated and paid as part of Final Payment under Section 7.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

6.7 Allowance Items and Allowance Values.

6.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

6.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction

Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advance authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.7.4 ~~The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.~~

~~[Alternatively, the parties may want to delete Section 6.7.4 and add the following provision.]~~

☒ In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item is ~~_____ percent (_____%)~~ greater than or less than the Allowance Value, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be determined in accordance with Section 6.4.

6.7.5 ~~Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.~~

Whenever the actual costs for an Allowance Item is less than the stated Allowance Value, the difference shall be credited to the Owner's Contingency, subject to Section 6.6.3. Whenever the actual costs for an Allowance Item is more than the stated Allowance Value the overage shall be paid out of the Owner's Contingency or the Contract Price shall be adjusted accordingly by Change Order, at the Owner's election, subject to Section 6.7.4. The amount of the Change Order or funds distributed from the Owner's Contingency shall reflect the difference between the actual Cost of the Work incurred by Design-Builder for the Allowance Item and the Allowance Value. A combination of Owner's Contingency and Change Order may also be used at Owner's discretion when appropriate.

6.8 *Reserved.* ~~Performance Incentives.~~

6.8.1 *Reserved.* ~~Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.~~

~~*(The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.)*~~

Article 7

Procedure for Payment

7.1 *Reserved* ~~*Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder:* (Insert terms.)~~

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the ___*twenty-fifth*___ (___*25th*___) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.2.2 Owner shall make payment within ~~ten (10)~~ ***thirty (30)*** days after Owner's ~~receipt~~ ***approval*** of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Progress Payments.

~~7.3.1 Owner will retain _____ percent (_____%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed *by Subcontractors* early in the Project.~~

~~***[Design-Builder and Owner may want to consider substituting the following retainage provision.]***~~

☒ Owner will retain ___*five*___ percent (___*5*___ %) of the ~~cost of Work~~, ***Cost of the Work*** exclusive of General Conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

7.3.2 Within ~~fifteen (15)~~ ***thirty (30)*** days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

[For public projects, Design-Builder and Owner may want to consider substituting the following retainage provision.]

~~☐ Owner will retain _____ percent (_____%) from Design-Builder's Applications for Payment pursuant to applicable state law.~~

~~***[Design-Builder and Owner may want to consider substituting the following retainage provision.]***~~

~~Because Owner has obtained a performance bond and payment bond pursuant to Article 9 below, Owner will not retain retainage from Design-Builder on this Project.~~

~~***[If Owner and Design-Builder have established a warranty reserve pursuant to Section 6.5.1.23 above, the following provision should be included.]***~~

☐ If a warranty reserve has been established pursuant to Section 6.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 6.5.1.23 above.

7.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ~~ten (10)~~ *thirty (30)* days after Owner's ~~receipt~~ *approval* of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.5 *Reserved.* ~~Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____%) per month until paid.~~

7.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

7.7 *Tax Statements. In order to receive sales and use tax reimbursement, Design-Builder shall provide a detailed listing of North Carolina sales and use taxes paid on eligible purchases on the State/County Sales & Use Tax Statement ("Tax Statement") form such as provided in Exhibit E . Tax Statements shall be submitted with each Application for Payment and shall include invoices documenting the eligible purchases made by Design-Builder or by Subcontractor and/or Supplier. Design-Builder shall not include taxes paid outside of North Carolina on this form.*

7.7.1 *Tax Statements must indicate whether such tax was paid by Design-Builder or by Subcontractor. If no taxes have been paid for the period in which a payment request is being submitted by Design-Builder, then Design-Builder shall indicate "No taxes paid this period" and submit Tax Statement accordingly. Tax Statements must be completed and signed by the Design-Builder's/Subcontractor's company officer submitting the statement and certified by a Notary Public. Tax Statement must list in detail the sales/use tax paid for each individual invoice paid by the Design-Builder /Subcontractor. No lump sum, running total, or copies of previously reported statements will be accepted. Tax Statements must show separately the North Carolina state and the county sales/use tax paid, identifying the county accordingly. The applicable sales taxes shall be based upon the rate in effect at the time such taxes are paid. In the event Design-Builder makes several purchases from the same vendor, Tax Statements shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid thereon. Tax Statement shall include the cost of any tangible personal property withdrawn from Design-Builder's warehouse stock and the amount of sales or use tax paid thereon by Design-Builder. Similar statements by Subcontractors shall be obtained by Design-Builder and furnished to Owner.*

7.7.2 *Tax Statements will be reviewed and approved by Owner prior to paying the sales and use tax reimbursement.*

Article 8

Termination for Convenience

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, and the parties have agreed to a payment to Design-Builder in the case of such termination of convenience, Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

~~[***Choose one of the following:***]~~

~~☐ The fair and reasonable sums for overhead and profit on the sum of items set forth in Section 11.6.1 of the General Conditions.~~

~~or~~

☒ Overhead and profit in the amount of ***TBD*** percent (____%) on the sum of items set forth in Section 11.6.1 of the General Conditions.

8.2 *Reserved.* ~~In addition to the amounts set forth in Section 8.1 above and Section 11.6.1 of the General Conditions, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:~~

8.2.1 *Reserved.* ~~If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.~~

8.2.2 *Reserved.* ~~If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.~~

8.3 *If the Design-Builder has proceeded to perform Phase 1 Services pursuant to Section 1.3.2.3(ii), then Owner and Design-Builder mutually agree to terminate this Agreement upon completion of all Phase 1 Services. Design-Builder shall have no further liability or obligations to Owner under this Agreement.*

~~***[The following Article 9 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]***~~

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

Jay Guffey, P.E., Engineering Supervisor
City of Greensboro Water Resources Department
2602 S. Elm Eugene Street

Greensboro, NC 27406
(336) 373-7779
Jay.Guffey@greensboro-nc.gov

9.1.2 *Owner designates the* individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: (*Identify individual's name, title, address and telephone numbers.)*

Nick Seeba
Sr. Project Manager, HDR
100 N Main St #1500
Winston-Salem, NC 27101
(336) 955-8289

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security *as part of the Phase 2 Services as defined by Article 6.1.2*:

Performance Bond.

☒ Required ☐ Not Required

Payment Bond.

☒ Required ☐ Not Required

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

☐ Required ☒ Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

11.1.1 *MWBE Requirements: Design-Builder represents and warrants that it will comply with the Owner's Commercial Non-discrimination Policy, as described under Section V.A.1 of the Owner's M/WBE Program Plan. As part of such compliance, the Design-Builder shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the Design-Builder retaliate against any person for reporting instances of such discrimination. The Design-Builder shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the Owner's Relevant Market. The Design-Builder understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the Design-Builder from participating in Owner's contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.*

11.1.2 *Sensitive Documents. All or substantial portions of the following documents may not be considered to be public records pursuant to applicable provisions of North Carolina law: Design-Builder's work product under this Agreement; and all plans, drawings and other documents containing security plans and arrangements and/or detailed plans and drawings of any facility of the Owner.*

Such work product, security arrangements, and/or detailed plans and drawings are herein referenced as Sensitive Document(s). Without limiting the foregoing, it is expressly understood and agreed that Sensitive Document(s) is not limited to documents related to this Agreement and includes any and all documents herein described concerning any facility of the Owner regardless of the type of facility and regardless of the manner in which the Design-Builder acquired possession of such documents. The Owner retains sole authority and discretion to determine whether all or any portion of any Sensitive Document is a public record pursuant to applicable provisions of North Carolina law. Under no circumstances will the Design-Builder provide the original or copy of any portion of any Sensitive Document (without regard to the status of such Sensitive Document as in preliminary, draft or final form) to any person or entity unless directed by the Owner or unless reasonably necessary to satisfy Design-Builder's obligations pursuant to this Agreement. The Design-Builder will maintain and implement such rules and procedures governing the conduct of its officers, employees, agents and subcontractors and the maintenance, handling and use of Sensitive Documents as may be reasonably necessary to prevent the release of any Sensitive Document in violation of this provision. Such rules and procedures will be subject to review by the Owner and such changes as the Owner determines to be reasonably necessary, including without limitation maintaining a log identifying any Sensitive Document provided to any person or entity that includes at a minimum, identification of the Sensitive Document provided, name of person releasing the Sensitive Document, name of person receiving the Sensitive Document, State Driver's License number of person receiving Sensitive Document, reason for releasing Sensitive Document, and date Sensitive Document released. Without exception, every person or entity receiving a Sensitive Document must agree not to copy or release such Sensitive Document to any other person or entity, unless otherwise approved by the Owner in writing. Such log need not include the release of any document to an officer or employee of the Design-Builder or to any employee of the Owner. A violation of any provision of this section is a serious violation of this Agreement and will be the basis for immediate termination of this Agreement for cause, notwithstanding any other provision of this Agreement to the contrary.

11.1.3 *E-Verify. Design-Builder shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Furthermore, if Design-Builder utilizes a subconsultant, Design-Builder shall require the subconsultant to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.*

11.1.4 *NC Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel. Design-Builder certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147- 86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Agreement. In signing this Agreement, Design-Builder further agrees, as an independent obligation, separate and apart from this Agreement, to reimburse the Owner for any and all damages, costs and attorneys' fees incurred by the Owner in connection with any claim that this Agreement or any part thereof is void due to Design-Builder appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Agreement.*

11.1.5 *Non-Appropriation of Funds. If City Council does not appropriate the funding needed by the Owner to make payments under this Agreement for a given fiscal year, the Owner will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the Owner will promptly notify the Design-Builder of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the Owner, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.*

11.1.6 *Legal Notices. Any notice, consent or other formal communication required or contemplated by this Agreement shall be in writing and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail to the intended recipient at the address set forth below:*

For the City of Greensboro:

Water Resources Department	*City Attorney's Office*
2602 South Elm-Eugene Street	*300 W. Washington Street*
Greensboro, NC 27406	*Greensboro, NC 28202*
Attn:	_____
Phone:	_____
Email:	_____

For the Design-Builder:

Company Name: _____
Address: _____
_____

Attn: _____
Phone: _____
Email: _____

With copy to:
Company Name: _____
Address: _____
_____
_____

Attn: _____
Phone: _____
Email: _____

11.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria
Exhibit B – Scope of Services
Exhibit C – Insurance Requirements for Design-Builder
Exhibit D – Forms
Exhibit E – State/County Sales/Use Tax Statement
Exhibit F – Project Schedule (Reserved for Phase 2 Services)
Exhibit G – Guaranteed Maximum Price Exhibit (Reserved for Phase 2 Services)
DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")
Contract Price Amendment, if any.
City of Greensboro M/WBE Program Plan

[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative disputes proceeding clause.]

☐ Any claims, disputes or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

[Section 2.9.1 of the General Conditions contains an option for the parties to establish a limited time frame for Design-Builder's warranty. If the parties agree to such a limited time frame, the parties may insert it below.]

☒ The parties have agreed to limit the time frame that Owner can make a claim pursuant to Section 2.9.1 of the General Conditions. Owner must make all claims pursuant to Section 2.9.1 of the General Conditions within __*one (1)*__ years of the date of Final Completion of the Project.

Article 12

Limitation of Liability

12.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract or warranty (express or implied), shall not exceed __*Fifty*__ percent (__*50*__%) of the Contract Price. The parties agree that specific consideration has been given by Design-Builder for this limitation and that it is deemed adequate.

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed as of the date first written above.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

CITY OF GREENSBORO: **CITY MANAGER'S OFFICE**	**DESIGN-BUILDER:**
_____ *(Name of Owner)*	_____ *(Name of Design-Builder)*
_____ *(Signature)*	_____ *(Signature)*
_____ *(Printed Name)*	_____ *(Printed Name)*
_____ *(Title)*	_____ *(Title)*
Date: _____	Date: _____

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

BY: _____ **DATE:** _____
(signature)

EXHIBIT A

OWNER'S PROJECT CRITERIA

EXHIBIT A - Owner's Project Criteria

City of Greensboro

Townsend Water Treatment Plant Advanced Treatment Facility (ATF)

Guilford County, North Carolina

November 7, 2025

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Contents

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Appendices

1 Introduction

1.1 Background

The City of Greensboro (City or Owner) owns and operates two surface water plants, Townsend and Mitchell Water Treatment Plant (WTP). Mitchell WTP has a capacity of 24 million gallons per day (MGD), while Townsend WTP has 30 MGD. Mitchell WTP is currently under design for an advanced process upgrade to address the removal of emerging contaminants, i.e., pre- and polyfluoroalkyl substances (PFAS). The City is currently planning to make a similar upgrade for Townsend WTP.

Townsend WTP is located near Browns Summit, North Carolina. The WTP utilizes conventional treatment consisting of coagulation, flocculation, sedimentation and filtration. Due to source water limitations, the City does not anticipate any plant capacity expansion beyond the 30 MGD filtered water capacity. Similar to Mitchell WTP, the City plans to design and construct an Advanced Treatment Facility (ATF) for PFAS removal to meet the US Environmental Protection Agency (EPA) April 2024 Mandate.

The City has completed rapid small-scale column testing on the Townsend WTP combined filter effluent using granular activated carbon (GAC) and anion exchange (AIX) to evaluate treatment effectiveness and media durability for PFAS removal. The bench-scale study conducted by CDM was provided as part of the RFQ. Based on the preliminary testing, the City selected GAC contactors for the Townsend WTP ATF. The City is seeking a design-build (DB) team to design and construct the ATF project.

2 Goals and Objectives

The goal of this owner's project criteria is to outline the City's criteria for project success and provide design and construction needs for the Townsend WTP ATF. The objectives of this project are:

1. Design and construct an ATF that will meet plant capacity and function by April, 2028. Facility commissioning will need to be compliant with EPA regulations by April, 2029.
2. Coordinate plant outages during construction so that the supply of water to customers is not affected.
3. Execute construction that will keep the neighboring community and industrial client operations functioning throughout each phase.
4. Provide consistent treatment for the removal of emerging contaminants (PFAS). Finished water quality will meet EPA requirements.
5. Provide access to Townsend WTP material deliveries and maintenance activities during construction.
6. Provide an assessment of the electrical system to ensure the new ATF has adequate capacity and identify any spare capacity that may exist for additional future expansions.
7. Provide piping for future capital improvement projects to prevent future deep excavation.

2.1 ATF Site Layout

The ATF will be located south of the property, with access for material delivery at the west and south of the property. The site plan for the ATF is shown in Appendix A, highlighting the locations for the ATF along with the ATF pump station, the ATF equalization basins, and the future clearwell.

3 Facility Design Considerations

3.1 City's PFAS Treatment Goals

PFAS, including perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), were detected in the Townsend WTP raw water above the maximum contaminant level (MCL). The City's treatment goal is to remove PFAS to meet current regulations by lowering PFOS and PFOA below 4 ng/L. To meet the April 2024 PFAS regulation, the City selected gravity GAC contactors for the PFAS removal treatment. The selection of the GAC contactors provides benefits in similar operations between the two plants, as it will equip staff with a cohesive knowledge to effectively manage, operate, and treat PFAS. PFAS water quality data are summarized in the appendix.

3.2 Drinking Water Treatment Processes

3.2.1 General Requirements

The general requirements for Townsend WTP ATF are:

- The ATF will be capable of conveying pumped filtered water to the GAC contactors for treatment and route treated water to the clearwell.
- Chemical injection points for sodium hypochlorite, fluoride, lime, corrosion inhibitor, and caustic will need to be relocated to the combined GAC-treated water pipe upstream of the clearwell.
- DB team to coordinate the purchase and delivery of GAC media through the Owner (City) to meet the schedule.
- Equipment and GAC selections should align with design decisions made on the Mitchell ATEC project.
- A GAC waste management strategy shall be developed to help guide the City in how to manage the waste stream generated by GAC installation and change out.
- The DB shall work with the City to develop a comprehensive tagging system for the new ATF, including equipment/instrumentation.
- The DB shall provide the installation date, valve types, tag, and number of turns and current to close for each buried valve.
- All valve operators shall have open directions clearly and permanently marked.
- Pipe Identification – the DB shall provide pipe color and labeling system for all piping.

3.2.2 GAC Facility

Granular activated carbon (GAC) contactors will be used at the ATF to provide treatment for the removal of PFAS. The minimum requirements for the GAC contactors are outlined below:

- The design shall not limit the City to less than the plant capacity of 30 MGD.
- Provide N+2 gravity GAC contactors – designed to include two contactors for GAC replacement and redundancy with Empty Bed Contact Time (EBCT) of a minimum 20 minutes.
- Convey flow from GAC contactors to the clearwell by gravity.
- Provide infrastructure for contactor backwash, washdown, and media loading/unloading.
- Provide accessible sampling locations for effluent and at several GAC bed depths within the contactors for contaminant breakthrough monitoring.
- GAC facility shall operate in parallel.
- GAC media shall be Calgon F400 or owner approved alternate.
- GAC backwash water shall be free from corrosion inhibitor and chlorine residual.

3.2.3 Additional Requirement

The ATF shall include a maintenance shop, office spaces, and a small conference area. The project also shall include ancillary piping for future capital projects, such as clearwell and residuals treatment to avoid repeated deep excavations.

3.2.4 Laboratory Sampling Access

The project shall include sampling access for filter influent and effluent analysis. DB may need to include a modification for the existing lab or provide a small lab in the GAC facility for pre-/post-filter sampling access. The DB shall coordinate with the City for any additional equipment required.

3.2.5 Chemical Injection

Relocate the finished water chemical injection point after GAC filters and just ahead of the clearwell (see appendix)

3.2.6 Pumping

The following shall be considered for the design of the finished water pump station:

- Provide N+1 vertical turbine pumps for backwash supply to the GAC contactors.
- Provide N+1 vertical turbine pumps for GAC influent supply to the GAC contactors.

4 Technical Discipline Design Considerations

The DB is responsible for the design and shall follow all applicable regulations, codes, and standards.

4.1 Electrical Basis of Design

The DB shall apply appropriate codes and standards in design and construction, including applicable National Fire Protection Association (NFPA), the National Electrical Code (NEC), and the North Carolina State Building Code.

4.1.1 Electrical Design Considerations

The electrical design shall encompass the new ATF and tie-in to the existing plant. The list below is not exhaustive but outlines some of the general City requirements. The DB shall:

- Evaluate current electrical system, including standby power generation, to determine if systems are adequate to supply new ATF and identify the amount of spare capacity that may remain for future expansion.
- Provide electrical room(s) that support instrumentation, pump equipment, and other required equipment and operation for Townsend WTP ATF.
- Coordinate with local electrical providers to ensure the provision of adequate service capacity for the ATF.

4.1.2 Power Supply and Distribution

The power supply and distribution plan for the new ATF shall include how the new facility will be integrated into the existing plant. Designated areas and spare electrical conduits for future power supply and electrical equipment shall be included in the design, if deemed necessary.

4.1.3 Generators

Provide an electrical analysis to determine if the current generator capacity can support the ATF, the existing plant, and additional future expansion demand. The DB shall provide a plan for the new WTP ATF tie-in with the existing plant backup generator and switchgear for backup power.

4.2 Instrumentation and Control Basis of Design

The instrumentation and control (I&C) design for the Townsend WTP ATF shall follow the requirements of NFPA, NEC, federal, and state regulations.

4.2.1 Instrumentation & Control Considerations

The I&C requirements outlined in this section summarize important City needs. This is not an exhaustive list, and DB shall provide a design that meets relevant standards, state, and federal requirements. I&C needs that the DB shall provide are:

- All controls, signals, and communication for all required equipment.
- SCADA system integration in coordination with the City. The City's standards shall be utilized.
- Coordination with the City for control and communication preferences.
- Coordination of surveillance, physical, and digital security measures for assets (e.g., firewall integration, gate/door access, etc.).

4.2.2 Operations Area

The DB shall provide SCADA monitoring of ATF processes at the operation center workstations.

4.3 Architectural Basis of Design

Architectural design shall follow the North Carolina Building Code and other applicable local and state standards. Architectural finishes and features shall be coordinated with the City.

4.4 Structural Basis of Design

The DB engineer of record is responsible for following the North Carolina Building Code relating to structural design and adhering to any other state and federal requirements.

4.5 Geotechnical Basis of Design

Geotechnical and survey design and analysis shall follow the North Carolina Building Code and other applicable local and state standards. DB is responsible for geotechnical and survey coordination for the project.

4.6 Site Civil Basis of Design

4.6.1 Stormwater Design Consideration

The DB engineer of record is responsible for following City and North Carolina requirements relating to site civil/development design and adhering to any other state and federal requirements.

4.6.2 Other Site Development Considerations

Other items that the DB shall consider for site development include:

- Providing paved roads designed to handle 53-foot tanker trucks traffic with adequate truck turnaround spaces.
- Road traffic around the existing Townsend Plant site is to remain in service but can be adjusted to accommodate project.
- The preconstruction phase will likely include early grading and demolition package and/or early procurement if they benefit the overall project. Six picnic shelters will be demolished, and the existing bathrooms will be repurposed (if possible).
- Deep excavations for existing piping near clear well structure.
- Installation of piping in the new work area for independent, parallel, and series operations for future clearwell.
- Accessibility of deep valve installations for post project operation and maintenance.

4.7 Permitting

The permitting requirements for the project shall include the Townsend WTP ATF. The DB shall provide the necessary documents to obtain all required permits for the subsequent construction of the project. The DB shall provide a project schedule that accounts for the time to apply for and receive permits. The following matrix is a listing of anticipated permits that will be required. This matrix is not intended to be a complete list of all required permits.

Permit	Agency
Technical Review Committee	City of Greensboro
Erosion & Sediment Control	NCDEQ
Stormwater Permit for Construction Activities	NCDEQ
Authorization to Construct	NCDEQ – Public Water Supply
Building Permits	City of Greensboro
Railroad encroachment, if needed	RR Owner

4.7.1 Permitting Activities

The DB is responsible for applying for and acquiring all required permits for the project, including getting approval from the Greensboro Technical Review Committee (TRC). The City is responsible for paying for the permits.

4.8 Performance Requirements and Warranty

All materials, equipment, and workmanship shall have the standard 1-year installation warranty. The Owner requires that all warranties provided begin at substantial completion of the project, unless otherwise agreed to by Owner. A comprehensive list of warranties shall be developed by the DB for review and acceptance by the City.

5 Additional Considerations

The following items were provided by the City as important for the project progress and shall be included by the DB:

- For Phase 1 – Preconstruction - the DB shall provide a 90% design level of effort with 30% and 60% design milestones. The Owner will consider GMP at the 60% or 90% design.
- For Phase 2 – Construction – DB Team will provide a proposed weather-day plan. The plan will include definitions of inclement weather, a means and process for tracking weather-days, how assumed days will be accounted for in the GMP, and will detail a compensation plan for weather-days.

6 Overall Project Document Control

The success of project coordination between the City and the DB will rely heavily on document control. The City requires access to project materials and any required software needed to review the design. Create and maintain a document control system for easy access to necessary project files. Provide monthly redlines throughout construction and provide electronic and hard copies of the final design documents, such as record drawings, to the City.

7 Safety and Quality Plan

7.1 Safety Plan

DB is expected to provide a site safety plan that covers any on-site work during design and construction. Review the Emergency Action Plan (EAP) for the City and the plant. Ensure that the safety plan incorporates site-specific EAP. DB Team will be required to attend a safety training seminar conducted by City staff specifically related to the Townsend Water Treatment Plant. The prime contractors and major subs contractors/consultants are required to attend.

7.2 Quality Plan

Provide a quality plan for the design and construction of the project. Include in the plan details on existing plant operation to ensure no interruption of water supply to customers, shutdown requirements for tie-in connection, plans to allow the normal delivery of chemicals and other

materials to the plant, and details on plant maintenance during construction. The DB is to consider the constraint of vehicular traffic at the plant and ATF and include a plan to address this throughout the project phases.

8 Deliverables, Workshops, and Meetings

It is anticipated that the scope of services for Phase 1 will be negotiated on a lump sum basis and will require approval by the City. Scope of services will include overall project scoping, design workshops, development of an initial opinion of cost, design services through a 30% submittal package (with cost estimate), and design completion to 90% with a Guaranteed Maximum Price prepared at the 60% design level. If the parties can negotiate the Agreement for Phase 1 scope of services, the City will request approval from Council upon which the DB will then be authorized to proceed with Phase 1. Scope items may include: early grading and demolition work; early procurement of long lead equipment items, and additional items, etc. as identified by the DB if it provides for schedule and cost efficiencies.

It is anticipated that preparation and delivery of a GMP and schedule for Phase 2 will be considered at 60% design level. The City will consider the GMP, work breakdown structure, scope, schedule, performance guarantees, and any changes to DB's team members. In addition, the City will work with the DB Team to finalize the terms of the DB Agreement for Phase 2. If the parties can negotiate the Agreement for Phase 2 including, but not limited to scope, schedule, contract terms, and GMP, then the City will request approval from Council upon which the DB will then be authorized to proceed with Phase 2. The City must be able to demonstrate that execution of the Phase 2 work is cost-effective, allows for local subcontractor competition, achieves schedule milestones, and meets the needs of the City. If a Phase 2 Agreement is not reached, then the City will have no further contractual responsibility to the DB and may seek alternatives for project completion.

The Phase 2 DB work will include completion of design services, equipment/material procurement, construction work, development of asset management data, start-up, training, testing and final Project completion as outlined in the DB Agreement.

In general, the design and construction scope of work includes the following key elements:

A. Implementing a robust safety program for all design and construction related activities.
B. Implementing a Minority and Women's Business Enterprise Office (OBO) participation program for all design and construction related activities, in compliance with the requirements of this RFQ.
C. Delivering quality assurance and quality control of design and construction-related activities.
D. Leading interactive design workshops with the City and Owner's Advisor.
E. Completing all preliminary and final design engineering efforts for the project with design document submittals at 30%, 60%, 90%, and 100% with a conformed set issued for construction.

F. Implementing a robust project controls strategy that keeps the City and the Owner's Advisor informed of all project components.
G. Developing an initial cost opinion with updated cost estimates at the 30% design stage, and 60% design stage. Cost opinion and estimates should be maintained throughout the Phase 1 effort in a format acceptable to the Department.
H. Developing alternatives analysis including capital and life-cycle costs to assist the City in making key decisions.
I. Completing all surveying and geotechnical engineering required for successful design and construction and development of construction pricing.
J. Working with the City to finalize all permitting activities and obtain permits required for project construction.
K. Developing and maintaining a project risk register with costs in a format acceptable to the City.
L. Providing all necessary project management, documentation, and progress reporting as required for a successful project.
M. Implementing an "Open-Book" and transparent progressive design-build process.
N. Working collaboratively with the City's operations, maintenance, and management team to provide key information to make decisions.
O. Providing engineering services during construction to include RFIs, shop drawing reviews, contractor change order requests, factory witness equipment testing observation and reports, preparation of record drawings, and project management support.
P. Construction management services.
Q. Leading start-up, performance testing, and any necessary training of City staff in successful operation of the ATF.
R. Completing project close-out activities including final punch-lists, operations and maintenance manual production, training, project certifications, documentation for asset management, and warranty efforts.
S. Response to RFIs shall be provided within 14 business days.
T. The City shall review and return submittals within 14 business days from the receipt date.
U. A submittal of major equipment cut sheets shall be provided for review and approval before purchasing.
V. The City's assigned administrative assistant shall be provided with access to the DB document control system for downloading and uploading submittals, RFI, and other project documents.

8.1 Workshops and Meetings

The process of coordinating meetings or workshops will be collaborative. The DB is to plan sufficient meetings or workshops to allow the City the opportunity to provide comments and review progress. DB should specify the expectations of the City in making decisions to allow for the design effort to progress according to the schedule represented by the DB. Construction progress meetings shall be coordinated closer to construction or as required by the City.

9 Project Schedule

The ATF shall be fully operational (*substantially completed*) by March 2028 to meet the EPA PFAS mandate requirement. DB to plan the overall design and construction schedule accordingly. The *final completion* date is April 2028. Table 9-1 provides further detail on upcoming timelines for the project.

Table 9-1. Preliminary Project Schedule

Task	Start	Duration	Finish
Council Approval of DB Delivery Method	-	-	September 17, 2025
DB Preconstruction Negotiation	January 1, 2026	6 weeks	February 10, 2026
Council Award for Preconstruction	-	-	March 17, 2026
Preconstruction Phase	April 1, 2026	8 months	December 1, 2026
GMP Negotiations	December 1, 2026	2.5 Months	February 15, 2027
Council Award for GMP	-	-	March 15, 2027
GMP Construction Work	April 1, 2027	12 months	April 29, 2028
Commissioning	May 1, 2028	12 months	April 28, 2029

9.1 Start-up and Commissioning

Start-up and commissioning shall include the DB and the City. The DB shall develop a detailed start-up and commissioning plan, which shall be approved by the City. All required training, operation & maintenance manuals, and standard operating procedures are to be provided during or before startup and commissioning completion.

10 Cost and Constructability

DB shall provide a cost estimate for the design and construction of the ATF and pipe installation for the future capital improvement project, along with outlining requirements for all tie-in and integration for the new facility. Cost should include an itemized breakdown and not a lump sum. The following cost proposals are to be provided:

- Initial cost estimate
- 30% design, cost estimate, and constructability
- 60% or 90% GMP

10.1 Guaranteed Maximum Price (GMP) Format

Each Interim and Final GMP Proposal ("Proposal") submitted by the DB shall be in a format approved by the City and "open-book" basis. . Cover Letters shall be signed by the Project Director and/or Officer of Design-Builder and have a time limit of acceptance.

Early Material / Long Lead Item Procurement Guaranteed Maximum Price (GMP) Proposal

- Section 1
  - GMP Cost Summary
  - Vendor/Equipment Bids
- Section 2
  - 30% Plans (or acceptable level of detail to procure early material)
  - Specifications Manual
- Section 3
  - Assumptions and Clarifications (Article 2.3.1.3)

Final Accepted GMP Proposal

- Section 1
  - GMP Cost Summary
  - General Conditions Cost Details
  - Self-perform Work Breakdown
  - Subcontractor Bids
  - Vendor/Equipment Bids
  - Allowance Item List and Backup (Article 2.3.1.5)
  - Contingency Justification Log
  - Updated Team Organizational Chart
  - Final Engineering Design and Engineering Services during Construction Scope and Fee Proposals
  - Schedule of Alternate Prices (Article 2.3.1.6) – IF APPLICABLE
  - Schedule of Unit Prices (Article 2.3.1.7)
  - Statement of Additional Services (Article 2.3.1.8) – IF APPLICABLE
  - Owner's Permit List (Article 2.3.1.12)
- Section 2
  - 75% Plans (or acceptable % complete level of Plans)
  - Specifications Manual
  - Geotechnical and SUE Data
- Section 3
  - Assumptions and Clarifications (Article 2.3.1.3)
- Section 4
  - Project Schedule (Article 2.3.1.4)

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A

Appendix A – ATF Conceptual Site Plan

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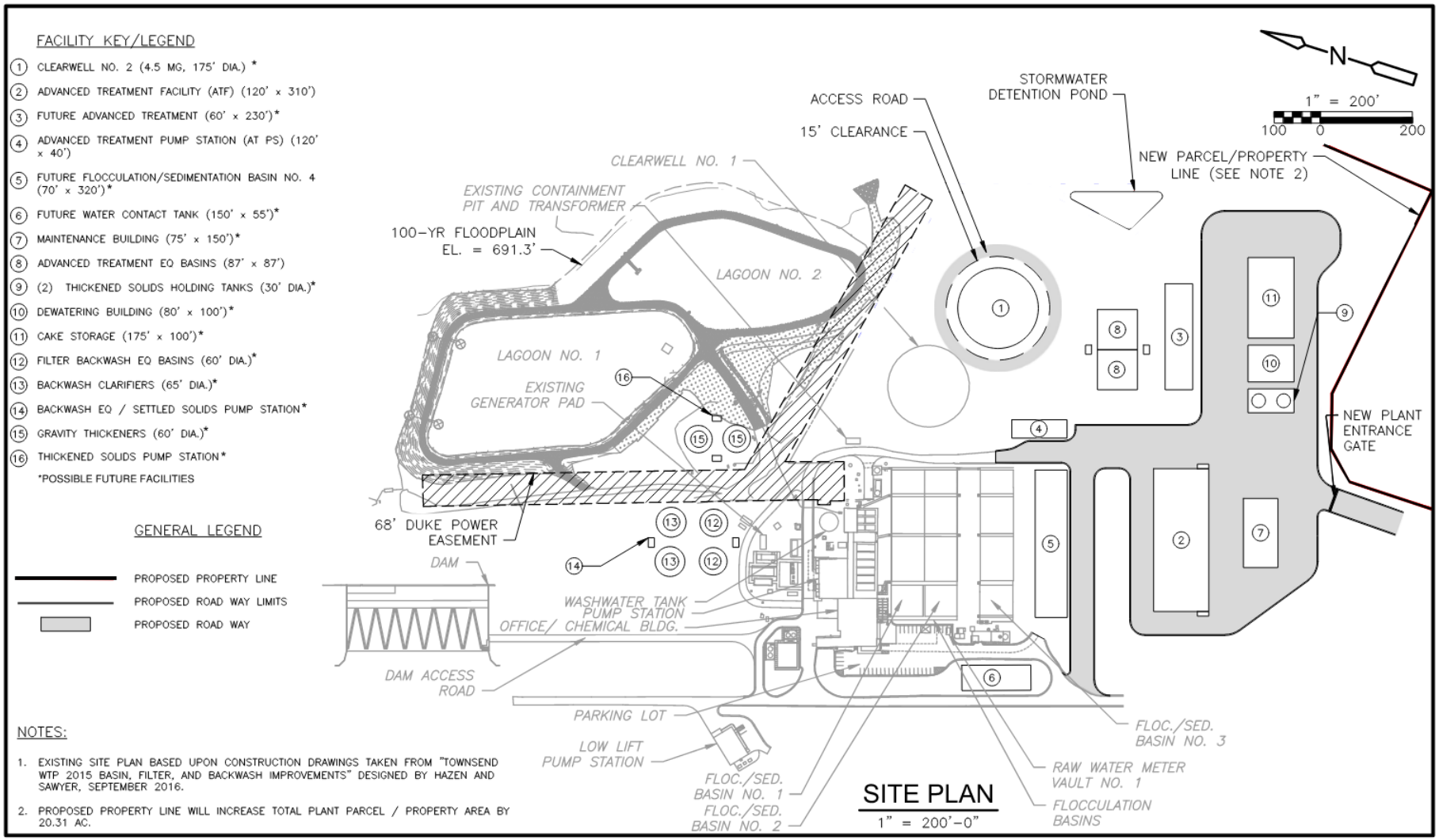

CDM Smith

City of Greensboro
Townsend Water Treatment Plant
Figure No. 21
CONCEPTUAL SITE PLAN
SEPTEMBER 2025

B

Appendix B - Cost Summary Format Example

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Description		***Amount:***	
Direct Costs			
	Labor		$ -
	Material		$ -
	Subcontracts		$ -
	Equipment		$ -
	Other		$ -
	Subtotal		**$ -**
Engineering Services			
	Design to 100%		$ -
	During Construction		$ -
	Subtotal		**$ -**
Indirect Costs			
	Sub/Vendor Bonds		$ -
	Permits		$ -
	Taxes		$ -
	Freight		$ -
	Subtotal		**$ -**
DB's Fees			
	DB's Fee (6.4.1)		$ -
	Subtotal		**$ -**
DB's General Conditions			
	DB's General Conditions (DBIA 535 Revised)		$ -
	Subtotal		**$ -**
Bonds & Insurance			
	Bonds		$ -
	Insurance		$ -
	Subtoal		**$ -**
Allowances			
	Allowance 1		$ -
	Allowance 2		$ -
	Allowance 3		$ -
	…		$ -
	Subtotal		**$ -**
	Total GMP		**$ -**

HDR Engineering, Inc. of the Carolinas
555 Fayetteville Street, Suite 900
Raleigh, NC 27601-3034
919.232.6600
N.C.B.E.L.S. License Number: F-0116

hdrinc.com

EXHIBIT B

SCOPE OF SERVICES

EXHIBIT B, ATTACHMENT 1

PHASE 1 SERVICES COST REIMBURSEMENT BASIS (CATEGORICAL RATES)

EXHIBIT B, ATTACHMENT 2

PHASE 1 SERVICES ALLOWANCE ITEM NO. 1 BREAKDOWN
EXHIBIT B, ATTACHMENT 3

PRELIMINARY DRAWING & SPECIFICATION LIST

EXHIBIT B, ATTACHMENT 4

PHASE 1 SERVICES PRELIMINARY MILESTONE SCHEDULE
EXHIBIT B, ATTACHMENT 5

DESIGN-BUILDER'S M/WBE OUTREACH PLAN

EXHIBIT C

INSURANCE REQUIREMENTS FOR DESIGN-BUILDER

In accordance with Article 5 of the General Conditions of the Agreement, Design-Builder shall furnish proof of insurance coverage in the minimum amounts specified below:

Minimum Levels of Insurance:

A. In addition to any other forms of insurance or bonds required by the Agreement, the Design-Builder will be required to carry the minimum insurance of the following kinds:

1. In addition to any other forms of insurance or bonds required by the Agreement, the Design-Builder will be required to carry the minimum insurance of the following kinds:

   a. Workers' Compensation, and related coverages:

      1) State: Statutory
      2) Applicable Federal (e.g. Longshoreman's): Statutory
      3) Employer's Liability: $1,000,000

   b. Design-Builder's General Liability under paragraphs which shall include completed operations and product liability coverages:

      1) General Aggregate: $2,000,000
      2) Products – Completed Operations Aggregate $2,000,000
      3) Personal and Advertising Injury $1,000,000
      4) Each Occurrence (Bodily Injury and Property Damage) $1,000,000
      5) Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
      6) Excess or Umbrella Liability
         a) General Aggregate $1,000,000
         b) Each Occurrence $1,000,000

   c. Automobile Liability:

      1) Bodily Injury: Each Person $1,000,000
         a) Each Accident $1,000,000
      2) Property Damage Each Accident $1,000,000
         a) Or Combined Single Limit of $1,000,000

   d. Professional Liability:

      1) Per Claim $1,000,000
      2) Aggregate $1,000,000

Railroad Protective Liability: When certain work is to be performed inside rights-of-way owned by railroads, North Carolina Department of Transportation or other Agencies, both the Design-Builder and any subcontractor may be required to furnish individual insurance certificates made in favor by the controlling agency, with limits as established by that agency, to include Railroad Protective Coverage as that may apply. (Proof of coverage to be provided with the Contract Price Amendment for the Phase 2 Services, if required.)

Automobile: Bodily injury and property damage liability covering all owned, non-owned and hired automobiles.

Comprehensive General Liability: Liability coverage as shall protect the Design-Builder performing work under this Agreement from claims of bodily injury or property damage which arise from operations of this Agreement whether such operations are performed by the Design-Builder, any subcontractor or anyone

directly or indirectly employed by either, to include coverage for products/completed operations, personal and advertising injury and contractual liability assumed under the indemnity provision of this Agreement and broad form property damage, explosion, collapse and underground utility damage. If a crane is to be operated on site, riggers liability shall be added to cover property in the care custody and control of the crane owner, and or operator.

The amounts of such insurance shall not be less than described above including bodily injury and property damage combined single limits each occurrence/aggregate. The City of Greensboro and its employees, agents, and representative (if applicable) shall be named as additional insured under the Design-Builder's general liability policies.

The Design-Builder shall purchase and maintain with a company acceptable to the City and authorized to do business in the State of North Carolina or have authorization to self-insure in the State of North Carolina, such insurance as will protect from claims which may arise out of or result from the Design-Builder's operation under the Agreement. This insurance shall be written for not less than the limits of liability specified above or required by law.

If any part of the work under the Agreement is sublet, the Design-Builder shall require the subcontractors to carry insurance commensurate with the work being performed for the project. However, this will in no way relieve the Design-Builder from providing full insurance coverage on all phases of the projects, including any that are sublet.

If any insurance required to be provided by the Design-Builder should be canceled or changed by the insurance company or should any such insurance expire during the period of this Agreement, the Design-Builder shall be responsible for securing other acceptable insurance to provide continuous coverage during the life of this Agreement.

Workers' Compensation: Workers' Compensation meeting the statutory requirement of the State of North Carolina, and Employer's Liability limits in the amounts shown above.

Professional Errors & Omissions: Insurance with a limit of not less than shown above for per claim occurrence as shall protect the Service Provider and the Service Provider's employees for negligent acts, errors or omissions in performing the professional services under this Agreement.

Design-Builder's Pollution Liability: In the event the Work includes excavation where there is a potential for release of Hazardous Materials and/or treatment or remediation of Hazardous Conditions, insurance of not less than $1,000,000 per occurrence and in the aggregate will be required. *(Proof of coverage to be provided with the Contract Price Amendment for the Phase 2 Services, if required.)*

Builders' Risk: Design-Builder shall purchase and maintain, builder's risk insurance in the amount of the initial Agreement amount for the Phase 2 services, plus values of subsequent modifications, change orders and loss of materials supplied or installed by others comprising the value of the entire project at the site on a replacement cost basis. Such insurance shall be maintained, unless otherwise provided in the Agreement or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Owner has insurable interest in the property to be covered, whichever is earlier. *(Proof of coverage to be provided with the Contract Price Amendment for the Phase 2 Services.)*

The insurance shall include interests of Owner and the Design-Builder as interest may appear in the project.

Design-Builder shall separately insure or be wholly responsible for all materials destined to become a part of the completed structure when such materials are stored away from the site of the work. Such insurance shall include the interest of Owner and shall be subject to review and inspection by Owner.

The insurance shall be written on a Special Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, flood (including water damage), earthquake,

and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests.

Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Agreement or by law, which shall specifically cover insured equipment during installation.

Failure of the Design-Builder to maintain continuous coverage as specified herein will result in this Project being shut down and any payments due, or to become due, withheld until such time as adequate, insurance is restored. This would be in addition to any legal recourse open to the Owner under breach of Agreement.

EXHIBIT D – FORMS

COMMERCIAL NON-DISCRIMINATION CERTIFICATION

Project: _____

All requests for proposals issued for City contracts shall include a certification to be completed by the proposer in substantially the following form:

The undersigned Bidder or Proposer hereby certifies and agrees that the following information is correct:

2. In preparing its enclosed bid or proposal, the Bidder or Proposer has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in Section 2.

3. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, or supplier on the basis of race, ethnicity, gender, age, or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.

4. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the proposal submitted with this certification, and terminate any contract awarded based on such proposal It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Bidder or Proposer to any remedies allowed thereunder, including possible disqualification from participating in City contracts or bid processes for up to two years.

5. As a condition of contracting with the City, the Bidder or Proposer agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of suppliers and subconsultants in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the proposal and to any contract awarded on such proposal. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Bidder or Proposer to any remedies that are allowed thereunder.

6. As part of its bid or proposal, the Bidder or Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder or Proposer in a legal or administrative proceeding alleging that Bidder or Proposer discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

7. As a condition of submitting a bid or proposal to the City, the Bidder or Proposer agrees to comply with the City's Commercial Non-Discrimination Clause as described in Section V.A.1 of the City's M/WBE Program Plan, and consents to be bound by the award of any arbitration conducted thereunder.

_____
Name of Design-Builder

_____ _____
Signature of Design-Builder's Authorized Official Date

_____ _____
Print Name Title

E-VERIFY CERTIFICATION

Project: _____

This E-Verify Certification is provided to the City of Greensboro (the "City") by the company signing below ("Design-Builder") as a prerequisite to the City considering Design-Builder for award of a City contract (the "Contract").

1. Design-Builder understands that:

    a. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies to enable employers to verify the work authorization of newly hired employees pursuant to federal law, as modified from time to time.
    b. Article 2 of Chapter 64 of the North Carolina General Statutes requires employers that transact business in this state and employ 25 or more employees in this state to: (i) verify the work authorization of newly hired employees who will be performing work in North Carolina through E-Verify; and (ii) maintain records of such verification (the "E-Verify Requirements"). Section 126-7.1 of the North Carolina General Statutes requires state agencies to verify their employees' work statuses through E-Verify.
    c. North Carolina General Statute 160A-20.1(b) prohibits the City from entering into contracts unless the contractor and all subcontractors comply with the E-Verify Requirements.

2. As a condition of being considered for the Contract, Design-Builder certifies that:

    a. If Design-Builder has 25 or more employees working in North Carolina (whether now or at any time during the term of the Contract), Design-Builder has complied and will comply with the E-Verify Requirements with respect to Design-Builder employees working in North Carolina; and
    b. Regardless of how many employees Design-Builder has working in North Carolina; Design-Builder will take appropriate steps to ensure that each subcontractor performing work on the Contract that has 25 or more employees working in North Carolina complies with the E-Verify Requirements.

3. Design-Builder acknowledges that the City will be relying on this Certification in entering into the Contract, and that the City may incur expenses and damages if the City enters into the Contract with Design-Builder and Design-Builder, or any subcontractor fails to comply with the E-Verify Requirements. Only in the manner and to the extent permitted by the North Carolina Tort Claims Act, N.C.G.S. § 143-291, et seq., and without waiver of its sovereign immunity, company agrees to indemnify and save the City harmless from and against all losses, damages, costs, expenses obligations, duties, fines and penalties (collectively "Losses") arising directly or indirectly from violation of the E-Verify Requirements by Design-Builder or any of its subcontractors, including without limitation any Losses incurred as a result of the Contract being deemed void.

_____
Name of Design-Builder

_____ _____
Signature of Design-Builder's Authorized Official Date

_____ _____
Print Name Title

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Project: _____

Design-Builder: _____

The bidder, contractor, or subcontractor, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Contract, or persons or entities holding greater than 10% equity interest in it (collectively "Principals"):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;

2. Have within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and

4. Have within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

☐ **I hereby certify as stated above:**

_____	_____
Print Name	Signature
_____	_____
Title	Date

☐ **I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]:**

_____	_____
Print Name	Signature
_____	_____
Title	Date

EXHIBIT E

STATE / COUNTY SALES / USE TAX STATEMENT (To be updated at a later date)

Project: _____

Company/Subcontractor:_____

Period Covered: _____ Page: _____ of ____

Invoice No.	Invoice Date	Vendor's Name	City Vendor No.	Amount Before Taxes	NC Tax	NC County Tax	Total Invoice Amount	NC County Paid

Subtotal (Page 1)	$	$	$	$
Plus total cost of material withdrawn from our warehouse stock	$	$	$	$

GRAND TOTAL	$	$	$	$

The undersigned certifies that the above listed vendors paid sales tax upon purchases of materials listed above or that the sales tax was paid directly to the North Carolina Department of Revenue and the property upon which such taxes were paid with or will be used in the performance of this Contract. No tax on purchases of tangible personal property purchased by such vendors for use in performing the Contract which does not annex to, affix to, or in some manner become a part of the Project is included in the above list. The purchases referenced have not been claimed on any other sales tax certification statement submitted to the City.

Signed: _____

Subscribed and sworn to before me this _____ day of _____ 20 _____

Signature of Notary Public _____

of _____ County

State of _____

My Commission Expires: _____

EXHIBIT F

PROJECT SCHEDULE (Reserved for Phase 2 Services)

EXHIBIT G

GUARANTEED MAXIMUM PRICE EXHIBIT (Reserved for Phase 2 Services)

Standard Form of General Conditions of Contract Between Owner and Design-Builder

Modifications to this document are as follows:

1. *Deletions from the DBIA Document No. 535 are shown with a strikethrough and screened text.*
2. *Additions and modifications to the DBIA Document No. 535 are shown in italics and underlined.*

Document No. 535
Third Edition, 2022

Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

1. **License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
2. **User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
3. **Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
4. **Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
5. **Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
6. **Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
7. **Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
8. **Acknowledgment.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition)

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of Owners, Design-Builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project. Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms – familiarity with the terms.
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed. This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as "Agreement"). It may also be incorporated by reference into other related agreements, as between Design-Builder and Design Consultant, and Design-Builder and Subcontractor.
General	Checklist	The following Sections reference documents that are to be attached to the Agreement: Section 3.5.1 Owner's Permit List Article 5 Insurance and Bonds Section 9.4.2 Unit Prices
2.1.3	Schedule	The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional's Services	Design-Builder's obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with Design-Builder's insurance advisor.
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals, and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.
5.1.1	Design-Builder's Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.
5.1.2	Exclusions to Design-Build	Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.
5.2	Owner's Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.

Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Section 11.6 of the General Conditions. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as set forth in Article 8 of the Agreement.
11.6.2	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

TABLE OF CONTENTS

Article Name **Page**

Article 1

General

1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under ~~either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* (2022 Edition); DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price* (2022 Edition); DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement* (2022 Edition); or~~ DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects* (2022 Edition).

1.2.2 *Basis of Design Documents* are as follows: ~~For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents." For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum*, for DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement*, the Basis of Design Documents are Owner's Project Criteria, Design-Builder's Proposal, and the Deviation List, if any.~~ For DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects,* the Basis of Design Documents are *as referenced in the Agreement and any supplemental documentation, including but not limited to the* Owner's Project Criteria, Design-Builder's Proposal*, GMP Exhibit,* and the Deviation List, if any.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

1.2.8 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.9 ~~*Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.~~ *Force Majeure: Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Agreement, and such failure or delay shall not be deemed a default of the Agreement or grounds for termination hereunder, if all of the following conditions are satisfied:*

1.2.9.1 If such failure or delay:

1.2.9.1.1 could not have been prevented by reasonable precaution;

1.2.9.1.2 cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and

1.2.9.1.3 if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, public health emergencies, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

1.2.9.2 An event that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

1.2.9.3 Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Design-Builder from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate the Contract by written notice to the Design-Builder.

1.2.9.4 Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Design-Builder or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Design-Builder of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

1.2.9.5 Upon the occurrence of a Force Majeure Event, neither party shall be entitled to an adjustment of the Contract Price.

1.2.10 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition).

1.2.11 *GMP Exhibit* means that exhibit attached to DBIA Document No. *545, Progressive Design-Build Agreement for Water and Wastewater Projects,* ~~530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price,~~ which exhibit will *be agreed upon and incorporated at a later time* ~~have been agreed upon~~ by Owner and Design-Builder. ~~prior to the execution of the Agreement.~~

1.2.12 *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in

accordance with ~~Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum* Price or with Section 2.3 of DBIA Document No. 544, *Progressive Design-Build Agreement*, or~~ DBIA Document No. 545, *Progressive Design-Build Agreement for Water and Wastewater Projects*.

1.2.13 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.14 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.15 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.16 *Site* is the land or premises on which the Project is located.

1.2.17 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.18 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.19 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.20 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health

and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the *DBIA Document No. 545, Progressive Design-Build Agreement for Water and Wastewater Projects*; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed

to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 ~~The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.~~ *Design-Builder has the right to seek an adjustment in the Contract Price and/or Contract Time(s) to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price.*

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, and *with the Owner's approval and signature authority,* Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such

consent shall not be unreasonably withheld.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. If the parties have opted in Section *11.2* of the Agreement

to establish a limited time frame for the warranty set forth in this Section, the warranty in this section shall be limited to the time frame set forth in Section *11.2* of the Agreement. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which

~~Design-Builder is entitled to rely upon in performing the Work:~~

~~**3.2.1.1** *To the extent currently available, s*urveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;~~

~~**3.2.1.2** *To the extent currently available, g*eotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;~~

~~**3.2.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;~~

~~**3.2.1.4** A legal description of the Site;~~

~~**3.2.1.5** To the extent available, record drawings of any existing structures at the Site; and~~

~~To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.~~

3.2.2 *Unless expressly stated to the contrary in the Contract Documents,* Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in ~~Owner's Permit List~~ *the permit matrix which is shown in Exhibit A of the Agreement.*

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

3.7 Owner Provided Inspection Services

3.7.1 *Owner will provide inspection services, at their own expense. Owner's inspection services, in no way, alleviate the Design-Builder from completing the Work or certifying the project, consistent with Construction Documents.*

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified ~~independent~~ experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.3 Spill Prevention, Response, and Reporting at Treatment Facilities

4.3.1 *The Design-Builder shall pay any costs incurred for spill response including clean-up and disposal fees and fines levied against the Owner for any spills or leaks caused by the Design-Builder or any of their subcontractors or vendors. The Design-Builder is responsible for training their staff, subcontractors, and suppliers on spill prevention, response, and reporting procedures. The Design-Builder shall maintain equipment necessary for the clean-up of spills, drips or leaks near the equipment or material that is being used or stored at all times. Suggested equipment includes absorbent, industrial wipers, barrier systems, and clean-up containers. Design-Builder must notify Owner immediately if a spill of any quantity or type occurs on the property.*

4.3.1.1 *Oil Pollution Prevention: Design-Builder shall be responsible for spill prevention and response for all storage tanks, pumps, and equipment holding any quantity of oil that the Design-Builder or his subcontractor or suppliers are using to execute the Work or have on-site in preparation for executing the Work. The Design-Builder shall provide prior notification to the Owner of all oil and petroleum deliveries, and the Owner must be present at the time of connect to and disconnect from storage containers or equipment. The following delivery requirements shall be followed for all petroleum and oil deliveries:*

4.3.1.1.1 *Be escorted to the delivery point by Design-Builder staff. A competent member of the Design-Builder's staff shall be present during all connections and disconnections.*

4.3.1.1.2 *Remain with the vehicle at all times, and continually monitor the fuel transfer process.*

4.3.1.1.3 *Use physical barriers systems such as wheel chocks shall be used to reduce the potential for unintentional disconnections.*

4.3.1.1.4 *Drain the loading/unloading lines to the storage tank and close the drain valves before disconnecting loading/unloading lines.*

4.3.1.1.5 *Place a drain pan or other appropriate containment device under all connections.*

4.3.1.1.6 *Inspect the vehicle before departure to confirm all loading/unloading lines have been disconnected and all drain and vent valves are closed and there are no leaks.*

4.3.1.1.7 *Design-Builder shall not conduct filling operations during precipitation events.*

4.3.1.2 *Stormwater Pollution Prevention:*

4.3.1.2.1 *Outdoor Washing Activities: Discharges from outdoor washing activities shall not be allowed to enter the stormwater system (stormwater pipes, catch basins, drainage ditches, rain gardens, and similar conveyances). The Design-Builder must have adequate equipment and implement management practices to properly treat, contain, collect, and dispose of wash water runoff generated during washing activities. Proper disposal of collected wash water must be arranged prior to beginning work.*

4.3.1.2.2 *Painting: Design-Builder shall not discharge into the stormwater system any wastes resulting from the cleaning of painting equipment or the removal of paint from structures. If solvents or other potentially hazardous products are used to clean painting equipment, the resulting wastewater may be hazardous and must be properly disposed of or recycled.*

4.3.1.2.3 *Concrete: Design-Builder shall not discharge concrete or any residue from rinsing equipment or trucks onto the ground or into the stormwater system. The Owner shall designate a concrete chute and tool wash area at each facility. All concrete remaining in delivery trucks after completion of the Work shall not be discharged or rinsed from truck at the facility.*

4.3.1.2.4 *Waste Management: Design-Builders shall use waste bins/dumpsters that are leak proof (no holes or damage). All bins/dumpsters shall be covered and have drain plugs.*

4.3.1.2.5 *Chemicals and Fuels: Design-Builders shall provide containment and any other spill prevention necessary for all chemicals and fuels stored or used on-site.*

4.3.1.2.6 *Seeding: Design-Builders must follow proper pesticide and fertilizer*

application methods as prescribed by industry standards and on product labels during seeding. If such products are spilled, the Design-Builder must respond promptly to collect and properly dispose of the spilled product and clean up the impacted area.

4.3.1.2.7 *Erosion: All land disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with local, state and federal regulations. Design-Builder shall refer to other specification sections for requirements related to Sedimentation Control Plans and NPDES Stormwater General Permit NCG10000 for Construction Activities coverage.*

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

5.2 *Reserved.* ~~**Owner's Liability Insurance.**~~

~~**5.2.1** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.~~

5.3 *Reserved.* ~~**Owner's Property Insurance.**~~

~~**5.3.1** Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse,~~

~~flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.~~

~~**5.3.2** Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.~~

~~**5.3.3** Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.~~

~~**5.3.4** Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.~~

~~**5.3.5** Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.~~

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay

Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 *Reserved* ~~Right to Stop Work and Interest.~~

~~If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.~~

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or

unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance *and copies of declarations* confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 *Reserved.* ~~Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.~~

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding

based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Reserved ~~Tax Claim Indemnification.~~

~~**7.2.1** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.~~

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation

or disability acts.

7.4.4 *This provision shall survive the expiration or early termination of the Agreement.*

7.5 Owner's General Indemnification.

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Owner*, its officers or employees.* ~~Owner's separate contractors or anyone for whose acts any of them may be liable~~.

7.5.2 *This provision shall survive the expiration or early termination of the Agreement.*

7.6 Limited Recourse.

7.6.1 None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate *and agreed upon* adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events ~~unless otherwise provided in the Agreement~~.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. ~~The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.~~ *It is understood and agreed that projects subject to NCGS 143-128(f1) require that disputes arising under an Agreement would be subject to a dispute resolution process specified by the Owner. In compliance with this statutory provision, the Owner specifies this section as the dispute resolution process to be used on this Project, regardless if the Project is or is not subject to NCGS 143-128(f1). It is further understood and agreed that this dispute resolution process is based on non-binding mediation and will only be effective to the extent that the parties to any mediated dispute participate in the mediation in good faith. It is also understood and agreed that the Owner is under no obligation under any circumstance to secure or enforce the participation of any other party in the mediation of any dispute subject to this Article and NCGS 143-128(f1).*

10.2.4.1 *Any dispute arising between or among the parties that arises from an agreement to perform services in conjunction with the Project, including without limitation a breach of such agreement, shall be subject to non-binding mediation administered by the American Arbitration Association under the industry appropriate Mediation Rules ("Rules"). To the extent any provision of the Rules is inconsistent with the provisions of this section, the provisions of this section shall control. The mediation provided in this section shall be used pursuant to this Agreement and NCGS 143-128(f1) and is in lieu of any dispute resolution process adopted by any other government entity, which process shall not apply to this Project.*

10.2.4.2 *The Owner and any party contracting with the Owner or with any first-tier or lower-tier subcontractor for the performance of the Project agree to participate in good faith in any mediation of a dispute subject to this Article and NCGS 143-128(f1), including without limitation the following Parties (if any): Contractor, independent contractor(s) of the Owner, surety(ies), subcontractor(s), and supplier(s).*

10.2.4.3 *The Design-Builder and all other parties shall include this section in every agreement to which it (any of them) is a party in performing the Services of the Project without variation or exception. Failure to do so will constitute a breach of this Contract, and the Design-Builder or other party failing to include this section in any agreement required by this section shall indemnify and hold harmless the remaining parties from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach. Notwithstanding the foregoing provisions of this section, it is expressly understood and agreed that the parties are intended to be and shall be third-party beneficiaries of the provisions of this section and can enforce the provisions hereof.*

10.2.4.4 *The following disputes are not subject to mediation: (i) a dispute seeking a non-monetary recovery; and (ii) a dispute seeking a monetary recovery of $15,000 or less.*

10.2.4.5 *A dispute seeking the extension of any time limit set forth in an agreement to perform the Services for the Project shall be subject to mediation pursuant to this section and NCGS 143-128(f1), but only if the damages which would be suffered by the party seeking the extension would exceed $15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.*

10.2.4.6 *For purposes of this section, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single party or two or more parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all parties to such disputes.*

10.2.4.7 *In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.*

10.2.4.8 *Prior to requesting mediation, a party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining party, unless supported by such investigation and good faith belief by the party requesting the mediation.*

10.2.4.9 *If a party breaches any provision of Section I of this Article, it shall indemnify and hold harmless all other parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other parties that arise from such breach.*

10.2.4.10 *All expenses incurred by a party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the Owner is named as a party to the mediation, the Owner shall pay at least one-third of the mediation expenses and costs divided among the parties. If more than one party to a dispute requests a mediation, the mediation expenses and costs to be divided among the parties shall be borne equally by the parties to the dispute; provided that, if the Owner is named as a party to the mediation, the Owner shall pay at least one-third of the mediation expenses and costs divided among the parties.*

10.2.4.11 *The mediation shall be held at a location agreeable to the mediator and all of the parties; provided that, if no agreement can be reached, the mediation will be held at such location in Guilford County as the mediator shall determine.*

10.2.4.12 *The provisions of this section are subject to any other provision of this Agreement concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this section.*

10.2.4.13 *The parties understand and agree that mediation in accordance with this section shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this section.*

10.3 *Reserved.* ~~**Arbitration.**~~

~~**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.~~

~~**10.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.~~

~~**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.~~

~~**10.3.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.~~

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 ~~NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.~~ *Notwithstanding any other provision in this Agreement, in no event will Design-Builder or Owner, and their employees, officers, directors, agents, successors, or assigns be liable to each other for any special damages, incidental damages, indirect damages, collateral damages, consequential damages, punitive damages, loss of business, lost profits or attorney's fees, suffered or incurred and arising out of or relating to, in any manner, this Agreement, however caused and on any theory of liability, in connection with any damages arising hereunder,*

even if advised of the possibility of such damages; provided, however, that to the extent that Owner is required to pay any special damages, incidental damages, indirect damages, collateral damages, consequential damages, punitive damages, loss of business, lost profits, or attorney's fees to a third party in connection with a third party claim proximately caused by the Design-Builder, such damages will constitute direct damages and subject to indemnification under Section 7.4 and not be subject to the limitations set forth in this Section 10.5.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 ~~If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.~~ *Owner, in addition to any other rights and remedies provided in the Contract Documents or by applicable Legal Requirements, may terminate the Agreement for cause for the following reasons:*

11.2.1.1 *If Design-Builder persistently fails to provide a sufficient number of skilled workers.*

11.2.1.2 *If Design-Builder persistently fails to supply the materials required by the Contract Documents.*

11.2.1.3 *If Design-Builder persistently fails to comply with applicable Legal Requirements.*

11.2.1.4 *If Design-Builder persistently fails to timely pay, without cause, Design Consultants or Subcontractors.*

11.2.1.5 *If Design-Builder persistently fails to prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted.*

11.2.1.6 *If Design-Builder persistently fails to perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in*

the Contract Documents or by applicable Legal Requirements, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.1.7 *If Design-Builder continuously and persistently provides Work that does not meet the requirements of the Construction Documents as determined by the Owner.*

11.2.1.8 *If Design-Builder ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.*

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay *undisputed* amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within ~~seven (7)~~ *thirty (30)* days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional ~~seven (7)~~ *thirty (30)* day period. If Owner, within such second ~~seven (7)~~ *thirty (30)* day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be

entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

11.6 Termination for Convenience.

11.6.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

11.6.1.1 All *services performed* and Work *properly* executed *prior to the effective date of termination* and for proven loss, cost or expense in connection with the Work;

11.6.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

11.6.1.3 The amount set forth in Article 8 of the Agreement.

11.6.2 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.8~~3~~ of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 ~~Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.~~ *Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the Owner or its vendors or licensors or which falls within any of the following general categories:*

13.1.1.1 *Trade secrets. For purposes of this Contract, trade secrets consist of information of the Owner or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.*

13.1.1.2 *Information of the Owner or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*

13.1.1.3 *Information relating to criminal investigations conducted by the Owner, and records of criminal intelligence information compiled by the Owner.*

13.1.1.4 *Information contained in the Owner's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered and/or maintained by the Owner about employees, except for that information which is a matter of public record under North Carolina law.*

13.1.1.5 *Citizen or employee social security numbers collected by the Owner.*

13.1.1.6 *Computer security information of the Owner, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software, and codes.*

13.1.1.7 *Local tax records of the Owner that contains information about a taxpayer's income or receipts.*

13.1.1.8 *Any attorney / Owner privileged information disclosed by either party.*

13.1.1.9 *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*

13.1.1.10 *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*

13.1.1.11 *Building plans of Owner-owned buildings or structures, as well as any detailed security plans.*

13.1.1.12 *Billing information of customers compiled and maintained in connection with the Owner providing utility services.*

13.1.1.13 *Other information that is exempt from disclosure under the North Carolina public records laws*

Categories stated in Sections 13.1.1.1 through 13.1.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Design-Builder acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Design-Builder will also comply with any more restrictive instructions or written policies that may be provided by the Owner from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

13.1.2 *Restrictions. The Design-Builder shall keep the Confidential Information in the strictest confidence, in the manner set forth below:*

13.1.2.1 *It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.*

13.1.2.2 *It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Design-Builder, other than an employee, agent, subcontractor or vendor of the Owner or Design-Builder who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.*

13.1.2.3 *It shall not use any Confidential Information of the Owner for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.*

13.1.2.4 *It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.*

13.1.2.5 *The Design-Builder shall use its best efforts to enforce the proprietary rights of the Owner and the Owner's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.*

In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Design-Builder shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the Owner or destroyed upon satisfaction of the purpose of the disclosure of such information.

13.1.3 *Exceptions. The parties agree that the Design-Builder shall have no obligation with respect to any Confidential Information which the Design-Builder can establish:*

13.1.3.1 *Was already known to the Design-Builder prior to being disclosed by the disclosing party;*

13.1.3.2 *Was or becomes publicly known through no wrongful act of the Design-Builder;*

13.1.3.3 *Was rightfully obtained by the Design-Builder from a third party without similar restriction and without breach hereof;*

13.1.3.4 *Was used or disclosed by the Design-Builder with the prior written authorization of the Owner;*

13.1.3.5 *Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Design-Builder shall first give to the Owner notice of such requirement or request.*

13.1.3.6 *Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Design-Builder shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.*

13.1.4 *Unintentional Disclosure. Notwithstanding anything contained herein in to the contrary, in the event that the Design-Builder is unintentionally exposed to any Confidential Information of the*

Owner, the Design-Builder agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the location of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.10 ***Joint Drafting***

13.10.1 *The Parties expressly agree that the Agreement and these General Conditions of Contract were jointly drafted, and that both had opportunity to negotiate their terms and to obtain the assistance of counsel in reviewing their terms before execution. Therefore, the Agreement and these General Conditions shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.*