



City of Charlotte, NC

**Request for Qualifications
for
Progressive Design-Build Services
for the
Mallard Creek Interceptor Improvement Project – Phase 1 and 2
FY21-DB-03**

This **REQUEST FOR QUALIFICATIONS** (“RFQ”) from the Owner named below invites the submittal of a Statement of Qualifications (“SOQ” or “proposal”) from Proposers interested in providing design-build services for the Project(s) described below. By submitting a SOQ, the Proposer represents that it has carefully read the terms and conditions of this RFQ and all attachments and Addenda and agrees to be bound by them. This RFQ is not an offer to enter into a contract, but merely a solicitation of persons interested in submitting an SOQ to the Owner for the Project.

DATE ISSUED:

May 14, 2021

OWNER:

City of Charlotte – Charlotte Water

PROJECT:

Mallard Creek Interceptor Improvement Project – Phase 1 and 2

OWNER CONTACT PERSON:

*Charlotte Water Procurement Officer
Katherine Osborne, katherine.osborne@charlottenc.gov*

SOQ DUE DATE AND TIME

Proposer’s SOQ shall be submitted no later than: **June 15, 2021 at 2:00 p.m.**

All SOQs must be submitted pursuant to the instructions below. It is the Proposer’s sole responsibility to ensure that the SOQ is delivered in the manner required by this RFQ by the Due Date and Time. Owner has the right to reject any SOQs not properly delivered.

TABLE OF CONTENTS

SECTION 1: OWNER DESCRIPTION

1.1: General.....4
1.2: Funding/Authority.....4
1.3: Procurement Website.....4

SECTION 2: OVERVIEW OF PROJECT

2.1: General.....4
2.2: Project Objectives.....5
2.3: Scopes of Work.....6
2.4: Estimated Budget8
2.5: Project Procurement Schedule8
2.6: Definitions9

SECTION 3: PROCUREMENT PROCESS

3.1: General Information10
3.2: Owner Rights and Procurement Conditions10
3.3: Outline of the Procurement Process11
3.4: Contract12

SECTION 4: SOQ SUBMITTAL, FORMAT, AND ORGANIZATION

4.1: SOQ Submittal Requirements13
4.2: SOQ Format Requirements.....13
4.3: SOQ Organization14

SECTION 5: ADDITIONAL INFORMATION ABOUT THIS RFQ

5.1: Charlotte Business INClusion18
5.2: Vendor Registration.....18
5.3: Public Records.....18
5.4: Commercial Non-Discrimination Ordinance19
5.5: E-Verify19
5.6: Applicable Laws.....20

5.7: Cost of SOQ Preparation.....20

5.8: Registration with Secretary of State of North Carolina20

5.9: Communication Guidelines20

5.10: No Lobbying20

5.11: NC Prohibition of Contracts with Companies that Invest in Iran or Boycott Israel20

5.12: Financial Capacity; Insurance Requirements21

FORMS

FORM 1: Proposer Information.....22

FORM 2: Basic Requirements.....24

FORM 3: General Background of Designer25

FORM 4: General Background of Builder28

FORM 5: Subconsultants / Subcontractors.....31

FORM 6: Affidavits 32-37

FORM 7: Commercial Non-Discrimination Certification38

FORM 8: E-Verify Certification.....39

FORM 9: Certification Regarding Debarment, Suspension and Other Responsibility Matters40

FORM 10: Byrd Anti-Lobbying Certification.....41

EXHIBITS

EXHIBIT 1: Charlotte Water Design-Build Real Estate Process42

EXHIBIT 2: Mallard Creek Interceptor Improvement Maps59

EXHIBIT 3: Sample Contract62

SECTION 1: OWNER DESCRIPTION

1.1 General

Charlotte Water (CLTWater) is seeking Progressive Design-Build services to assist with the analysis, design and construction of the Mallard Creek Interceptor Improvement Project – Phase 1 and 2 (Project). Proposers need to assemble a team of experts including at a design, survey, geotechnical, environmental, permitting, pre/post blasting surveys and related seismic monitoring, real estate acquisition including appraisal and legal, and communication experts and construction contractors. Requirements for real estate firms, appraisal services, and legal services associated with easement acquisitions are defined in Exhibit 1.

1.2 Funding

This project will be funded in the FY22-27 CIP.

1.3 Procurement Website

The full RFQ document, addenda, clarifications, and all other related information will be posted on CLTWater's Opportunities website at <https://charlottewater.org/opportunities>. Each Proposer is responsible for checking the CLTWater website to obtain the latest information.

SECTION 2: OVERVIEW OF PROJECTS

2.1 General

The Mallard Creek Basin service area consists mainly of residential zoning, with increasing commercial development around the new Blue Line Extension, UNC Charlotte, and the University Research Park. Infrastructure improvements are needed, not only to support current flows and maintain required service levels within the Mallard Creek Basin, but to also keep pace with the rapid growth and development. Hydraulic modelling conducted for the Mallard Creek Basin indicated that the Mallard Creek interceptor is currently capacity limited under two-year peak flow conditions. Future population and flow projections further suggested that flows in the basin would likely grow about 20 percent every 10 years. Per Charlotte Water's Capacity Assurance Program (CAP), for the purposes of accepting new connections, adequate capacity exists when the sanitary sewer system can convey flows at a 2-year Level of Service (LOS) between the point of connection and the wastewater treatment plant without excessive surcharge, while future enhancements are sized for the 10-year peak flow condition.

Improvements needed to maintain the desirable level of service were sized for the 10-year peak flow condition with 2070 population (based on Charlotte Planning Department Future Land Use), 10-year wet-weather peak flow recurrence, no additional inflow and infiltration above the base year (2016), and with an allowable modeled surcharge of no more than one quarter manhole depth. These improvements are scheduled to take place in three phases starting from the Mallard Creek Water Reclamation Facility (WRF) as shown in Figure 1 of Exhibit 2.

Current capacity limitations within the Mallard Basin were further confirmed by observed surcharge/manhole inspections, and recent flow monitoring. In addition to confirming capacity limitation, the flow monitoring conducted showed areas in the basin with high rates of inflow and infiltration. Rehabilitation of sewers with significant defects are anticipated, with the aim of reducing excessive wet-weather system flows in order to restore additional sewer capacity. Potential targeted areas for rehabilitation were identified within subareas FM-5, Site 20, and Site 33, as shown in Figure 4 of Exhibit 2, as well as several locations on the existing trunk sewer. In general, the identified rehabilitation work may include:

- manholes requiring rehabilitation
- stormwater cross-connections to repair

A Technical Memorandum summarizing the results of the condition assessment, CCTV data and potential detailed rehabilitation work orders will be provided to the Design-Build Firm awarded the project. Work packages developed by Brown and Caldwell will be provided to the selected DB Team. The project currently has a planned rehabilitation estimate of \$300,000.

In addition to capacity limitations, the shallow interceptor installation, and particularly aerial crossings of Mallard Creek, are a concern considering risks associated with exposure to the environment and greater potential for external damage.

2.2 Project Objectives

The overall objectives for Mallard Basin Program goals and success factors are as follows:

- Provide a long-term vision for the Mallard Creek WRF.
- Undertake projects responsibly, balancing cost and risk while controlling capital and O&M costs.
- Appropriate reasonable project flexibility.
- Provide additional conveyance and treatment capacity to support growth in a timely fashion.
- Implement a comprehensive communication plan to provide information and seek community feedback.
- Provide infrastructure/facilities that are simple to operate and maintain.
- Provide coordination across projects for accurate cash flowing, scheduling, construction packaging, sequencing, and prioritization.
- Establish a collaborative relationship between the Owner and the Design-Build Team to deliver quality design and construction.
- Complete the project on time and within the Owner's budget/GMP.
- Maintain a safe, injury free work site(s) and environment throughout each phase of the project.
- Meet or exceed all regulatory and permitting requirements.
- Maximize contracting opportunities with City certified and registered Minority, Women, Small Business Enterprise (MWSBE) firms.

Alternative Delivery Justification: Per N.C.G.S. 143-128.1A, the following are the criteria that were used in determining the circumstances under which the design-build method is appropriate for these projects:

- The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications for a design-builder.
- The time constraints for the delivery of the project.
- The ability to ensure that a quality project can be delivered.
- The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.
- A good-faith effort to comply with N.C.G.S. 143-128.2, N.C.G.S. 143-128.4, and to recruit and select small business entities. CLTWater shall not limit or otherwise preclude any Proposer from submitting a response so long as the Proposer, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (c) of this section.

- The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of N.C.G.S. 143-128(a1).

2.3 **Scope of Work**

This project comprises of Phase 1 and 2 of the multi-phased Mallard Creek Interceptor Improvements (Figure 1 of Exhibit 2). Phase 1 will extend from the Mallard WRF influent pumping station, to Toby Creek, near North Tryon Street (Figure 2 of Exhibit 2) and Phase 2 from Toby Creek up to Mallard Creek Road (Figure 3 of Exhibit 2). Based on condition assessments and preliminary field investigation, the first and/or second phase will potentially include rehabilitation construction of significant defects in several identified areas (Sites 33, 20 and FM-5) of the basin (Figure 4 of Exhibit 2).

Firms will be selected based on the intent and ability to complete all aspects of the project as demonstrated in their SOQ submittals. Charlotte Water intends to issue a contract to either a single Firm or multiple Firms for Phase 1 and Phase 2 initially. Subsequently CLTWater, at its sole discretion, may choose to award a contract to a selected Firm to perform Phase 3 depending on the selected Firm's overall performance of Phase 1 and/or Phase 2. **Charlotte Water may also elect to take the design prepared for Phase 2 and put it out for competitive bid.**

Based on ongoing coordination with Mecklenburg County regarding the County's greenway capital improvements that will pave a section of Mallard Creek Greenway between Mallard Creek Road and David Taylor Drive, it is in the interest of both Charlotte Water and Mecklenburg County to coordinate design efforts for the Phase 2 Interceptor design in this section of the greenway. Timing for the Phase 2 interceptor construction will be reviewed based on the designs developed, extent of conflicts, construction schedules of both greenway and interceptor projects and funding availability. Based on current funding for the basin, Phase 2 construction will likely start in mid-2025.

Design Scope

The Mallard Creek Interceptor improvements will consist of three phases of design and construction of approximately 49,600 LF of new sewer from the WRF, following Mallard Creek upstream across the basin, and ending with the West Mallard Branch near Hubbard Road. This project includes Phase 1 and 2. Early in the design phase, the Design-Builder will provide a construction cost comparison for a full replacement sewer option, which will include abandonment of the existing Mallard Interceptor or a parallel sewer option, which will require the existing Mallard Creek Interceptor to remain in service to meet projected capacity needs.

Phase 1 begins at the Mallard Creek WRF, just outside the fence from the proposed new Influent Pump Station (constructed via a separate project) and ends at the confluence with Toby Creek to the west near Tryon Street. For the Phase 1 project, a parallel sewer would consist of approximately 175 LF of 72-inch, 12,000 LF of 66-inch sewer and 3,150 LF of 60-inch sewer with associated manholes, stream crossings, and trenchless construction methods for road crossings. The new parallel trunk sewer will be connected to the existing trunk in multiple locations to take advantage of the combined capacity of both pipes.

A full replacement sewer would consist of approximately 11,530 LF of 72-inch sewer and 3,795 LF of 66-inch sewer with associated manholes, stream crossings, and trenchless construction methods for road crossings. Approximate average depth of the parallel sewer is 20 feet and ranges from 14 feet up to 45 feet below ground surface to pipe invert. Based on the modeled conditions, the current average daily dry weather flow is 12.2 MGD, current 10-year peak hourly flow is 51.5 MGD. Pipe sizing will consider the 2070 future flow condition at the 10-year peak flow recurrence.

Phase 2 begins at the confluence with Toby Creek, where Phase 1 ends, to Mallard Creek Road. For the Phase 2 project, a parallel sewer would consist of 3,500 LF of 54-inch, 1,940 LF of 48-inch,

2,150 of 42-inch, 1,690 LF of 36-inch, 2,235 LF of 30-inch, and 3,065 LF of 24-inch with associated manholes, stream crossings, and trenchless construction methods for road crossings. A full replacement sewer would consist of approximately 2,640 LF of 60-inch, 2,970 LF of 54-inch, 4,550 LF of 48-inch, and 4,485 LF of 42-inch with associated manholes, stream crossings, and trenchless construction methods for road crossings. Approximate average depth of the parallel sewer is 16 feet and ranges from 12 feet to up to 35 feet below ground surface to pipe invert. Based on the modeled conditions, the current average daily dry weather flow is 6.8 MGD, current 10-year peak hourly flow is 14.3 MGD. Pipe sizing will consider the 2070 future flow condition at the 10-year peak flow recurrence.

For either option, the new sewer will be constructed at a lower elevation than the existing sewer to eliminate aerial crossings and trunk line siphons. The new trunk sewer will require additional permanent easements, access easements, and potentially temporary easements to complete construction. The Design-Builder will be responsible for acquiring the necessary easements through the established CLTWater protocols. The project will also include moving some existing connections from the existing trunk to the new trunk.

If during the design of this project, an alternative design is discovered that is more cost-efficient, better accomplishes the project objectives, and/or provides for better collaboration with other city departments, the alternative option(s) may be chosen.

Public Communication and Project Coordination

The Design-Builder will be an integral part of the public communications plan. The Design-Builder will collaborate with CLTWater, CLTWater Program Manager and the Mallard WRF Improvements CMAR on connecting the interceptor with the planned Influent Pump Station. The Phase 1 Interceptor Project cannot go live until the Influent Pump Station is deemed ready to accept flows.

Coordination will be required with ongoing design and planned construction for the Mallard Creek Cross Trail Charlotte (XCLT Trail) "Segment 11", which extends from Pavillion Blvd to Cabarrus County and portions of "Segment 10", which extends from the Mallard Creek Church Rd to Pavillion Blvd (Phase 1 of the Mallard Interceptor Improvements). In addition, coordination with Mecklenburg County Park and Recreation will be required with ongoing design and planned construction for the Mallard Creek Greenway Paving and Improvements project between Mallard Creek Road and David Taylor Drive (Phase 2 of the Mallard Interceptor Improvements). Further, Mecklenburg County Park and Recreation is coordinating with the Mecklenburg County Storm Water Services for partnership opportunities to have stream restoration work performed in this area. Coordination with both County entities will therefore be required. Generally, coordination with Mecklenburg County will also be required throughout the project for right of entry permits and easement acquisition, and project communication/regular updates throughout the project will be needed to coordinate activities through the Mecklenburg County Greenways. Where possible, the Design-Builder should evaluate options to keep the Mallard Creek Greenway open and accessible during construction.

Coordination with Program Manager

Charlotte Water has retained Brown and Caldwell (BC) as Program Manager for this project. The selected DB Team will collaborate with BC during the design, permitting and construction of the project. BC will provide review and input into schedules, cost estimates, design deliverables, GMPs, public communication materials and the cost model prepared by the DB Team.

Cost Estimating

Budget is critical on this project and the Design-Builder will be expected to have a high degree of accuracy of cost estimating at all levels of design, particularly 30 percent and 60 percent design such that development of the final Guaranteed Maximum Price (GMP) proceeds seamlessly.

Permitting

The Design-Builder will provide the expertise and resources and will work with CLTWater and the regulatory agencies to successfully obtain all required permits.

Construction

The Design-Builder will provide adequate construction expertise, management, and resources to complete the project safely, on schedule, and within budget. The Design-Builder may need to provide pre-and post-blasting surveys and vibration monitoring for rock excavation activities during construction.

Project Schedule

Milestone	Deadline
Notice to Proceed	September, 2021
Preliminary Engineering Phase 1 & 2	April 2022
60% Design GMP Submittal – Phase 1	September 2022
GMP Submittal – Phase 2	TBD
Easements’ Acquisition (Phase 1 and 2)	September 2023
Final Design (Phase 1 and 2)	April 2023
Phase 1 Construction Start (NTP)	May 2023
Phase 1 Construction Substantial Completion	May 2025
Rehabilitation Construction Start	TBD
Rehabilitation Construction Substantial Completion	TBD

2.4 Estimated Budget

The anticipated budget for the Project is as followed:

- Targeted Rehabilitation Construction (CLT Water will provide construction documents): \$300,000
- Phase 1 Design and Construction: \$57,700,000
- Phase 2 Design and Construction: \$35,600,000

2.5 Project Procurement Schedule

2.5.1 The following is the Project Procurement Schedule. The Owner reserves the right to modify the Project Procurement Schedule via Addenda.

Event	Deadline
Issuance of RFQ	May 14, 2021
Pre-Proposal Meeting	May 27, 2021 at 2:00 PM
Last Day for Questions	June 4, 2021 at 5:00 PM
SOQ Packages Due	June 15, 2021 by 2:00 PM
Selection Notification	June 23 – June 29, 2021
Finalize Preconstruction Scope and Fee	June 30, 2021
Recommendation to Council	August 9, 2021

2.5.2 A pre-proposal meeting will be held via Webex at the time and date indicated in the Schedule of Events. Although this meeting is not mandatory, attendance is strongly

encouraged. To join the meeting, call one of the following numbers:

1-650-479-3207 Call-in number (US/Canada)

1-855-244-8681 Call-in toll-free number (US/Canada)

When prompted, enter the following access code: 160 754 5446

Or

Click the following link:

<https://charlotte.webex.com/charlotte/j.php?MTID=m7c7fafdabc88afdc91437e2695ca994d>

The Webex app may be downloaded to a device in advance of the pre-proposal meeting to allow for mobile viewing. Attendees are asked to mute their phones to limit unnecessary background noise. An account is not needed to view the Webex. Attendees will be asked to provide their name and email address.

2.6 **Definitions**

- 2.6.1 Business Day:** any day on which the Owner is open for regularly conducted business.
- 2.6.2 Charlotte Business INclusion:** Refers to the Charlotte Business INclusion Policy and Program of the City of Charlotte pertaining to participation of Minority, Women, Small Business Enterprises (MWSBEs) on City contracts and procurements.
- 2.6.3 Design-Builder:** The entity with the prime design-build contract with the Owner.
- 2.6.4 Design-Build Team:** All entities listed by the Design-Builder as providing services or construction on the Project. The Design-Builder is not required to list all members of the Design-Build Team in the SOQ. Members of the Design-Build Team may also be referred to as “Team Members.”
- 2.6.5 Key Team Member:** Individuals who will be assigned to the Project who play an important role in the design, construction, or management of the Project.
- 2.6.7 Procurement:** The Owner’s process for selecting a Design-Build Team for this Project.
- 2.6.8 Procurement Documents:** All documents issued by the Owner in connection with the Procurement or Project.
- 2.6.9 Projects of Similar Scope and Complexity:** Projects that had completion dates within the last 5 years or are at least 80% complete in construction currently and that have many or all of the following characteristics: *(Note: These are not minimum criteria but considered the ideal experience level by which all project experience submitted will be evaluated against.)*

Projects of a similar size and budget that include:

- Design and construction of large diameter gravity sewer pipelines (greater than or equal to 36-inches in diameter)
- Sewer rehabilitation of mainlines, manholes and cleanouts including lining, coating of manholes and repair/replacement of cleanouts
- Construction in wetlands and in close proximity to streams.
- Tunneling and Road crossing.

Projects that utilize a collaborative delivery method that require strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design.

Projects where the Design-Builder was selected based primarily based on qualifications and where the Design-Builder collaborated with the Owner to develop the final price and schedule.

Projects where the Design-Builder was selected based on a strong recruitment and utilization of MWSBEs.

2.6.10 Proposer: The Proposer is the legal entity responsible submitting the SOQ and for delivering the project and executing contracts for the project if they are selected as the Design Builder. That could be the engineer, constructor, or joint venture entity depending on the structure of the proposed team. Proposer shall also include any and all members of the design-build team.

SECTION 3: PROCUREMENT PROCESS

3.1 General Information

3.1.1 Compliance with Legal Requirements

Procurement will be in accordance with N.C.G.S. 143-128.1A and all applicable federal, state, and local laws, and Owner policies and procedures.

3.1.2 Addenda / Questions and Answers

Proposers may submit written questions concerning this RFQ to Katherine Osborne via email at katherine.osborne@charlottenc.gov. Questions received after the stated deadline in the Schedule of Events will not be answered. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, specifications, or any other item stated in the RFQ. Changes, interpretations, and clarifications considered necessary by the Owner in response to questions received will be issued by Addenda. Addenda shall be made in writing only and posted on CLTWater's website at <https://charlottenc.gov/Water/Pages/Opportunities.aspx>.

Proposers are encouraged to contact the Charlotte Business INclusion (CBI) Liaison for assistance or clarification with issues specifically related to the City's CBI Program. The point of contact is Frederica Love, who may be reached via email at fllove@charlottenc.gov.

3.2 Owner Rights and Procurement Conditions

3.2.1 The Owner reserves without limitation, and may exercise at its sole discretion, the following rights and conditions with regard to this Procurement process:

- a. To cancel the Procurement process and reject any and all SOQs and/or Proposals;
- b. To waive any informality, technicality, or irregularity;
- c. To revise the Procurement Documents and Schedule via an Addendum;
- d. To reject any or all responses to the RFQ, to advertise for new RFQ responses, or to accept any RFQ response deemed to be in the best interest of the City;
- e. To require confirmation of information furnished by an Proposer, require additional information from an Proposer concerning its SOQ or Proposal and require additional evidence of qualifications to perform the work described in this RFQ;
- f. To provide clarifications or conduct discussions, at any time, with one or more Proposers;
- g. To contact references who are not listed in the Proposer's SOQs and investigate statements on the SOQs and/or qualification of the Proposer and any Proposers or individuals identified in the SOQ;
- h. To consider Alternative Technical Concepts and/or approaches identified by Proposers;
- i. To take any action affecting the RFQ process, the RFP process, or the Project

that is determined to be in the Owner's best interests; and

- j. Approve or disapprove of the use of particular Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Subconsultants, Subcontractors, or Key Team Members from those identified in the SOQ or Proposal. Such approval or disapproval shall not be unreasonably exercised.
- k. To establish a maximum number of projects that a Proposer may be awarded.

3.3 Outline of the Procurement Process

3.3.1 Request for Qualifications (RFQ)

- a. This RFQ invites Proposers to submit SOQs describing in detail their technical, management, and financial qualifications to design, permit, construct, commission, and close out the Project.
- b. Proposers will submit their SOQ and other deliverables required pursuant to this Procurement at the time and in the manner set forth in this RFQ and any Addenda. The Owner will not consider SOQs or other deliverables that are submitted after the deadline set forth in the RFQ. See Section 4 for detailed information on how to submit a proposal.
- c. The Owner will evaluate the information submitted by each Proposer. Any Proposer who fails to meet the requirements set forth in the RFQ may be deemed non-responsive and will not be considered further by the Owner in this procurement.
- d. All SOQs will be evaluated in accordance solely with the criteria established in the RFQ and any Addenda issued thereto. The evaluation criteria are listed herein, including the relative weight given to each criterion.
- e. Following evaluation of the SOQs, the three most highly qualified Proposers shall be ranked. Owner will then begin negotiations with the highest-ranked Proposer.
- f. Design-Build Team Members and individual Key Team Members will be used as a basis for selection. Once shortlisted, neither the Proposer nor Team Members that are submitted to the Owner as part of the SOQ or Proposal may substitute a listed consultant, subconsultant or subcontractor, or any individual listed as a Key Team Member; however, a change to any submitted Team Member or Key Team Member will result in re-evaluation and may result in a change to the evaluation and ranking of the Proposer.

3.3.2 Selection Process / Interviews

Pursuant to North Carolina General Statute 143-64.31, CLTWater is conducting a "qualifications-based" selection process without regard to fee or the price of the project.

CLTWater will conduct a fair and impartial evaluation of all proposals that are received in accordance with the provisions of this RFQ. CLTWater will appoint a selection committee to perform the evaluation. CLTWater reserves the right to obtain clarification of any point in a Proposer's/team's Qualification Package or to obtain additional information. All Proposers/teams who submit Qualification Packages will be notified of the selection committee's choice. Final approval of any selected Proposer/team is subject to the action of City Council or appropriate City officials.

Interviews with Proposers are not anticipated, but may be held at the option of the selection committee. An interview process may be used to clarify the information contained in the SOQ, but not to modify the SOQ. The SOQ evaluation committee may use the interviews to confirm or modify the evaluation of the SOQs and to clarify any questions.

3.3.3 Evaluation and Ranking of Proposers

In the evaluation and ranking of Proposers, the Owner will consider the information submitted in the SOQ, as well as optional interviews with the Proposers with respect to the evaluation criteria set forth in the RFQ and RFP. The result of the evaluation will be a comparative ranking of Proposers. Only the top three Proposers' ranking will be disclosed.

For the purpose of selecting and evaluating Proposers, the evaluation criteria will be given the following relative weights:

Item	Weight
Proposer's understanding of project, methodology, and approach;	15%
The Proposer's experience in providing similar services for similar projects;	30%
Qualifications, abilities, and availability of key individuals identified in the Qualifications Package;	20%
Team's Experience and Understanding of Applicable Standards, Permitting and Design Requirements;	15%
Minority, Women, Small Business Enterprise (MWSBE) Participation Plan describing Proposer's approach and past history with MWSBE inclusion for similar projects, as well as the proposed utilization of MWSBEs proposed to perform a commercially useful function under the scope of this contract.	10%
Quality, completeness and readability of SOQ package;	10%

3.3.4 Failure to Comply with Instructions

The City may choose to exercise the following options for SOQ packages that fail to comply with any requirement of this RFQ: a) assign a low rating; or b) deem the SOQ non-responsive and remove the SOQ from further consideration.

3.3.5 Modification of Withdrawal of SOQs

Proposers may change or withdraw their SOQs at any time prior to the due date by providing written notice via email to the Procurement Officer stated on page 1 of this RFQ. In order to be effective, the intent of the notification must be clear and concise.

Withdrawal of a SOQ will not preclude a Proposer from subsequently submitting a new SOQ, so long as that new SOQ is properly submitted and received by the City's Procurement Officer prior to the SOQ Due Date.

3.4 Contract

3.4.1 Contract Format

The Owner will enter into negotiations for the Design-Build Agreement with any selected Proposer. A sample of the agreement that will be utilized for this project is attached as Exhibit 3. Pursuant to 3.4.2, the Owner reserves the right to modify any of these documents as it deems appropriate and that is determined to be in the Owner's best interests.

3.4.2 Negotiations and Modification of Contract Documents

The City reserves the right to conduct negotiations with the Proposer regarding any remaining issues provided that the general work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the RFQ. The City will make such modifications to the Contract Documents as it may

determine, in the exercise of its sole discretion, to be necessary to fully incorporate the terms of the Proposer's Statement of Qualification, or to correct any inconsistencies, ambiguities, or errors that may exist in the Contract Documents. If, in the City's sole discretion, it determines that the highest qualified Proposer is not responsive to the negotiation process, negotiations are negatively impacting the project schedule, or that the parties will be unable to reach a mutually-acceptable Contract, the City may terminate negotiations with the Proposer. The City will then continue the process of negotiation with the next highest qualified Proposer until the City either successfully negotiates a Contract or cancels the procurement.

SECTION 4: SOQ SUBMITTAL, FORMAT, AND ORGANIZATION

4.1. SOQ Submittal Requirements

If the Proposer would like to be considered for providing the required services to the City, submit one (1) or an electronic proposal to Katherine Osborne at katherine.osborne@charlottenc.gov. Proposals must be in searchable PDF format only and sent as an attachment to the email (Proposers may not provide a link to the document). PDF attachments must be limited to less than 50 MB. Hard copies will not be accepted. The subject line of the email shall include "FY21-DB-03".

Firms may not include hyperlinks, QR codes, or similar, that links to websites or additional online resources in their SOQ. All content submitted for consideration must be printed in the SOQ and adhere to the page limits provided above.

Each Proposer is solely responsible for the timely delivery of their SOQ. Proposers accept all risks of late delivery regardless of fault. In addition, Proposers accept all risks if file is corrupted, incorrect, incomplete, or not attached. Any SOQ received after the date and time specified, regardless of the mode of delivery, shall not be considered. The Procurement Officer will confirm receipt of SOQs

4.2 SOQ Format Requirements

The SOQs shall comply with the following format requirements:

- a. Pages shall be numbered.
- b. Pages sized greater than 8.5x11-inches will count as two pages. These larger pages may be used in any section at the Proposer's discretion.
- c. Add tabs between sections.
- d. The font shall be no smaller than 11 points for narrative sections, but may be reduced for captions, footnotes, etc. as required while still maintaining legibility.
- e. Page limits are provided for individual sections in Section 4.3.
- f. Word versions of Form 1: Sections 2, 3, 6, and 8 will be provided on CLTWater's website at <https://charlottewater.org/opportunities>. Proposers may complete the Word versions of these forms or may choose to replicate the forms provided the following:
 - i. there are no modifications to the format of the forms;
 - ii. there are no modifications to the language on the forms;
 - iii. the information is provided in the same order as shown on the forms;
 - iv. the forms remain reader-friendly;
 - v. completing/replicating the forms electronically does not significantly increase the number of pages being submitted; and
 - v. The PDF version of the forms is searchable.

Modifying the forms may be grounds for rejection of the Proposer's SOQ. Proposers are responsible for ensuring all information is transposed accurately.

- g. SOQs that exceed the page limit may be rejected. The Owner, at its sole discretion,

reserves the right to remove pages from the sections of any non-conforming SOQ submittals to bring each non-conforming SOQ submittal within the page count requirement.

4.3 SOQ Organization

SOQs shall consist of the following parts:

4.3.1 Cover letter

Page limit: 1 page

Cover letter to be signed by person authorized to execute contracts on behalf of the Proposer and designated Proposer's contact person for this project (if different)

4.3.2 Section 1 - Proposed Project Personnel

Page limit: 10 pages

- a. Provide an overall organizational chart for the Proposer. Include all Key Team Members and supporting team members. Chart should designate team member's employer.
 - o Please note Proposers must also complete Form 5 – "Subconsultants / Subcontractors" which requires identification of any MWSBE subconsultants / subcontractors. This form also has a separate section to identify subconsultants performing real estate services.
- b. Proposer must provide an explanation of the project team selection. In accordance with N.C.G.S. 143-128.1A, provide either of the following:
 - o A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design-builder proposes to use for the project's design and construction.
 - o An outline of the strategy the design-builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes.
- c. Proposer must provide an explanation of the selection of the design professional(s). Per N.C.G.S. 143-128.1A, the design-build team shall certify that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by N.C.G.S. 143-64.31.
- d. Proposer may provide up to a one-page summary describing the organization of the team and the benefits of the team organization to the execution of the project.
- e. Proposer must provide two resumes for each of the following key positions listed below. Proposer shall indicate which candidate the Proposer believes is the best (primary) person and which candidate is the backup.
 - Project Manager – individual responsible for the overall delivery of the project including planning, design, construction, and commissioning and would serve as the primary owner contact.
 - Design Manager – individual responsible for managing the activities and team resources to deliver the planning and design of the project through 100% design.
 - Lead Process Engineer – individual responsible for leading the process approach and design.

- Preconstruction Services Manager – Individual responsible for constructability reviews, permits needed during construction, cost estimating, GMP development, and other as needed for the transition between design and construction phases.
- Construction Manager – individual responsible for the delivery of the construction phase of the project. They would be responsible for providing constructability reviews during design and managing the team resources to deliver the construction phase of the project.
- Site Superintendent – individual assigned to the project full time in the field to manage all construction activities and team field staff on the project site.
- Safety Manager - individual with appropriate training and experience in safety requirements and methodologies who will be assigned to the project to provide guidance and oversight to the team in the field. Individual should not be a corporate position that will not be engaged with this project.

Each resume for the key positions will include the following information in the order described:

- Name and qualifications relative to general experience and qualifications (can be narrative statement), education, total years of experience, years with current company, and registrations/certifications (note whether these are North Carolina and if NC no need to list other states)
- Names and addresses of previous employers for past 10 years
- Provide a summary of at least three **Projects of Similar Scope and Complexity** performed by the candidate within the last 5 years. The summary shall include:
 - o Project Name
 - o Brief Description of project scope
 - o Constructed Value
 - o Project Duration and Completion Date
 - o Candidate's Position and Duties
 - o Owner Point of Contact, Email Address and Phone Number

The following commitment is required of all key team members by including the following statement in the bottom margin of the resumes:

- **"This proposed individual shall be available to meet the scope and schedule on this Project(s) for its entire duration and shall not be reassigned without the expressed written concurrence of CHARLOTTE WATER."**

- f. For other key support staff leading primary components of the project execution provide brief biographical information for each technical discipline (including planning, geotechnical services, surveying, design, and permitting), as well as, primary members of the construction phase services support staff. Resumes shall include: qualifications, similar project experience, and professional registrations. The total page limit for this section governs for this biographical information and Proposers will choose which key staff to present.
- g. This section should include a single chart illustrating the percent availability for the project for all team members for which resumes are provided.

4.3.3 Section 2 - Proposer Experience (Design-Build, Design, and Construction)

Page limit: Project descriptions – 1 page per project; Project/team member relationship chart - 1 page.

- a. Provide three (3) total projects highlighting Proposer's team experience with collaborative delivery projects (preference may be given for design-build), design, and construction of Projects of Similar Scope and Complexity.
- b. Design-Build projects are preferred and count for both design and construction if Proposer's team members are the same as those who delivered the work.
- c. All projects should have been completed within the last 5 years and may include current projects if they are beyond 80% complete in construction.
- d. Project Experience sheets should be formatted as follows:
 - Section A – General Information
 - o Name of project
 - o Owner name, title, phone number and email address (Contact name should be individual involved in the project management for the owner.)
 - o Name of designer and constructor
 - Section B – Project Description
 - o Project scope
 - o Project budget and describe if completed above or below bid or GMP
 - o Key elements or challenges of the project similar to this project
 - o Project schedule (including initial contract time, actual time to complete, and the completion date). Include the reason for any project time extensions.
 - o Penalties assessed by the owner including but not limited to claims or liquidated damages
 - o Claims on the project, including any made against the Owner
 - Section C – Team Members
 - o Key Team Members for this project that worked on the team experience project and their position/role on the team experience project.
 - Section D – Innovative Solution to a Challenge
 - o Describe at least one project challenge and how it was managed.
- e. Include a single matrix chart illustrating the relationship/connection of proposed team members for this project to the team experience projects included in this section.

4.3.4 Section 3 - Perception of the Work and Approach

Page limit: 5 single sided pages

- a. The following information should be included at a minimum:
 - Comments on the Project scopes as described in this RFQ and perceived needs of the Projects.
 - Methodology and approach to the design, permitting, and construction services,

including innovative or creative alternatives that could be proposed to add value or cost savings opportunities.

- Potential risks and mitigation for all phases of the Projects.
- Describe how Proposer will ensure sufficient bidders of all work packages.
- Describe how Proposer will address craft labor shortage and ensure sufficient resources to accomplish schedule.
- Describe Proposer's process to develop GMP. How much of the construction work does the Contractor intend to subcontract?
- Expected needs from Owner-provided services.

4.3.5 Section 4 – MWSBE Participation

Page limit: 2 pages

a. Provide a response to the following questions:

- Has the Proposer included Minority, Women, Small Business Enterprises on past similar projects?
- Was this experience with the City of Charlotte's INClusion program? If no, state the program used and briefly describe the requirements and compliance.
- Include a list of past projects and your MWSBE utilization on said projects.
- Identify outreach efforts that will be employed by the Proposer to maximize inclusion efforts as well as outreach efforts that have already been conducted in connection with this RFQ. Identify specific scopes of work to be performed by MWSBEs.
- Provide a recent project example of compliance efforts and results.

4.3.6 Section 5 – Forms

Page limit: Submit forms as provided

- Form 1: Proposer Information
- Form 2: Basic Requirements
- Form 3: General Background of Designer
- Form 4: General Background of Builder
- Form 5: Subconsultants / Subcontractors
- Form 6: Affidavits
- Form 7: Commercial Non-Discrimination Certification (See Section 5.3)
- Form 8: E-Verify Certification (See Section 5.4)
- Form 9: Certification Regarding Debarment, Suspension and Other Responsibility Matters
- Form 10: Byrd Anti-Lobbying Certification

Exhibits provided for information only:

- Exhibit 1: Real Estate Related Services and Real Estate Firms
- Exhibit 2: Mallard Creek Interceptor Improvement Maps

SECTION 5: ADDITIONAL INFORMATION ABOUT THIS RFQ

5.1 Charlotte Business INclusion Program

Pursuant to the Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program promotes diversity, inclusion, and local business opportunities in the City's contracting and procurement process for Minority-owned Business Enterprises (MBE), Women-owned Business Enterprises (WBE), and Small Business Enterprises (SBE) with a significant business presence in the Charlotte-Gastonia-Salisbury Combined Statistical Area (CSA). Please go to www.charlottebusinessinclusion.com to access the CBI Policy and other available information.

The CSA consists of the following: (i) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; (b) the South Carolina counties of Chester, Lancaster, and York.

You are highly encouraged to consider any and all possibilities for MBE, WBE, and/or SBE participation on this project. A complete list of all MBEs, SBEs, and WBEs registered with the City is available at <https://charlotte.diversitycompliance.com> by clicking the "Search Certified Directory" tab. If an MBE or WBE is not registered with the City prior to the submission of the Proposer's SOQ but desires to work with the firm, then the responsibility falls to the vendor, MBE, or WBE to meet the requirements for registration.

All Design-Build projects are subject to Part G of the CBI Policy. The City will negotiate CBI participation goals with the selected Proposer but the goal for the Pre-construction Phase, if any, and Construction Phase will be negotiated separately. The Proposer and the City will agree to a Participation Plan that defines subcontracting goals, including the outreach and other efforts the Proposer will undertake to meet the subcontracting goals. After award and during the course of the project, the selected Proposer will be required to report all payments in the CLTInclusion system at <https://charlotte.diversitycompliance.com> for all firms participating on the project (both certified and non-certified).

Any CBI participation goal and the Participation Plan will be made part of the selected Proposer's agreement with the City.

In evaluating the Proposer's SOQ, the City may take into account: (1) the Proposer's past performance in meeting MBE, WBE and SBE goals; (2) the Proposer's Participation Plan; and (3) the Participation Plan submitted by other firms in comparison to the firm's Participation Plan.

5.2 Vendor Registration

In order to measure the effectiveness of the City's CBI Program, all prime consultants subconsultants and suppliers must be registered in the City's Vendor Registration System. Consultants and subconsultants not registered cannot receive payment for services and/or supplies provided under any City contract.

5.3 Public Records

Upon receipt by the City, each Qualifications Package becomes the property of the City and is considered a public record except for material that qualifies as "Trade Secret" information under North Carolina General Statute 66-152 et seq. Qualifications Packages will be reviewed by the City's Selection Committee as well as other City staff. Members of the general public, who submit public record requests after a selection result has been announced to the public, will be provided a copy of the qualifications package, unless otherwise noted herein. To properly designate material as a trade secret under these circumstances, each Proposer must take the following precautions: (a) any trade secrets submitted by a Proposer should be submitted in a separate, sealed envelope

marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Qualifications Package," and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope.

In submitting a Qualifications Package, each Proposer agrees that the City may reveal any trade secret materials contained in such response to all City staff and City officials involved in the selection process and to any outside consultant or other third parties who serve on the Selection Committee or who are hired by the City to assist in the selection process. Furthermore, each Proposer agrees to indemnify and hold harmless the City and each of its officers, employees and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Proposer has designated as a trade secret. Any Proposer that designates its entire Qualifications Package as a trade secret may be disqualified from the selection process.

5.4 Commercial Non-Discrimination Ordinance

The following provisions are incorporated into any contract that may result from this solicitation:

As a condition of entering into this Contract, the Proposer represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Proposer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Proposer retaliate against any person or entity for reporting instances of such discrimination. The Proposer shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Proposer understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Proposer from participating in City contracts or other sanctions.

As a condition of entering into this Contract, Proposer agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Proposer has used on City contracts in the past five years, including the total dollar amount paid by Proposer on each subcontract or supply contract. Proposer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Proposer agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Proposer to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time.

The Proposer understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Proposer from participating in City contracts and other sanctions.

5.5 E-Verify

As a condition for payment under this Contract, Proposer shall: (i) comply with the E-Verify requirements set forth in Article 2 of Chapter 64 of the North Carolina General Statutes (the "E-Verify Requirements"); and (ii) cause each subcontractor under this Contract to comply with such

E-Verify Requirements as well. Proposer will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of any failure by Proposer or any subcontractor to comply with the E-Verify Requirements.

5.6 Applicable Laws

The Proposer agrees to make itself aware of and comply with, and cause its subcontractors to comply with, all federal, state and local laws, regulations and ordinances relating to the performance of this Contract.

5.7 Cost of SOQ Preparation

The City accepts no liability for the costs and expenses incurred by Proposers responding to this RFQ, in preparing responses for clarification, in attending interviews, participating in contract development sessions, or in attending meetings and presentations required for the contract approval process. Each Proposer that enters into the procurement process shall prepare the required materials and proposals at its own expense and with the express understanding that the Proposer cannot make any claims whatsoever for reimbursement from the City for the costs and expenses associated with the procurement process. The RFQ does not commit the City to pay for costs incurred in the submission of a response to this RFQ or for any cost incurred prior to the execution of a final contract.

5.8 Registration with Secretary of State for North Carolina

Any Proposer wishing to be considered for the Project(s) must be properly registered with the Office of the Secretary of State no later than 15 business days prior to contract award by Charlotte City Council. Any Proposer(s) selected under this RFQ will be responsible for providing all professional, technical, managerial, and administrative staff with the appropriate skills and qualifications to perform the required Project.

5.9 Communication Guidelines

Proposers and their staff are prohibited from communicating with elected City officials and City employees regarding the RFQ or proposals from the time the RFQ has been released until all Proposers have been notified and the selection results have been publicly announced. These restrictions extend to "thank you" letters, phone calls, and emails and any contact that results in the direct or indirect discussion of the RFQ and/or the Qualification Package submitted by the Proposer. Violation of this provision by the Proposer and/or its agents may lead to disqualification of the Proposer's proposal from consideration.

5.10 No Lobbying

The Proposer certifies that it has not and will not pay any person or organization to influence or attempt to influence an officer or employee of the City or the State of North Carolina in connection with obtaining a contract under this RFQ.

5.11 NC Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel

Proposer 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 before or during the RFQ. In submitting a proposal in response to this RFQ, Proposer further agrees, as an independent obligation, separate and apart from this RFQ, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that the Proposer's SOQ or any part thereof is void due to Proposer appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the RFQ.

5.12 **Financial Capacity; Insurance Requirements**

Any successful Proposer must have the financial capacity to undertake the work and assume associated liability. Any successful Proposer will be required to furnish proof of insurance coverage in the minimum amounts specified below:

- Professional liability insurance coverage in the minimum amount of \$2,000,000;
- Automobile liability in the minimum amount of \$1,000,000;
- Commercial general liability in the minimum amount of \$2,000,000; and
- Workers' compensation insurance as required by North Carolina statutes.

**Request for Qualifications for
Progressive Design-Build Services Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 1
PROPOSER INFORMATION**

Project: Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project –
Phase 1 and 2

Form 1 consists of two pages and should be signed by a person empowered to commit the Proposer to a contractual arrangement with the City of Charlotte. The individual executing Form 1 on behalf of the Proposer, being duly sworn, solemnly swears (or affirms) the following:

- He/she has fully read the RFQ document and agrees to the contents.
- The information contained in this SOQ, including its forms and other documents, delivered or to be delivered to the City, is true, accurate, and complete. This SOQ includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.

Proposer: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PROPOSER INFORMATION

City of Charlotte Vendor
Number: _____

Person(s) to Contact
Regarding Proposal (including
questions and selection
announcements):

Contact 1 Name: _____

Contact 1 Email: _____ Phone: _____

Contact 2 Name: _____

Contact 2 Email: _____ Phone: _____

Does the Proposer or any key individual have any conflicts of interest with the Project?

Yes No (If yes, please attach an additional sheet explaining.)

Does the Proposer or any key individual:

- a) currently have any unresolved claims, disputes, and/or litigation with the City of Charlotte?
- b) have claims, disputes, and/or litigation with the City of Charlotte resolved/settled within the past 5 years?
- c) currently have any violations of the Charlotte Business INClusion policy?
- d) had violations of the Charlotte Business INClusion policy within the past 5 years?

Yes No (If yes to any of the above, please attach an additional sheet explaining.)

Does the Proposer confirm they have the ability to meet the insurance bonding requirements necessary for the Project?

Yes No

Does the Proposer intend to execute an Agreement with the Owner if selected for the Project?

Yes No

Does the Proposer acknowledge that:

- a selection committee established by Charlotte Water will evaluate the submittals and make a recommendation to Charlotte City Council, but the award of these contracts for the Project will be in the sole discretion of the Charlotte City Council?
- there is no statutory or legal entitlement to be awarded a contract and, hereby, waives the right to object to Charlotte Water's methods of evaluation of submitted SOQs, as well as the right to object to the selection ultimately made by City Council?

Yes No

Proposal contains confidential / proprietary / trade secret information:

Yes No (If yes, pages must be clearly identified as described in Section 5.3.)

Acknowledgement of Addenda:

No.: _____ Date: _____

No.: _____ Date: _____

No.: _____ Date: _____

No.: _____ Date: _____

No.: _____ Date: _____

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 2
BASIC REQUIREMENTS**

The following requirements will be reviewed and weighted heavily during selection. Charlotte Water may not select a Proposer who fails to meet the below requirements.

- A. Provide a notarized letter(s) addressed to CHARLOTTE WATER and referencing this RFQ from the Proposer's surety company(ies) which verifies the Proposer's total bonding capacity and states that the surety company(ies) intend(s) to issue standard payment and performance bonds on behalf of the Proposer if a contract(s) to construct the Project(s) is awarded. An Proposer must have sufficient remaining bonding capacity from an acceptable surety to satisfactorily bond the work. An acceptable surety shall be one with at least an A.M. Best Rating of A- or higher and must be included in the Department of the Treasury's Listing of Certified Companies (the list can be found at the following web address: https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm)
- B. Provide payment and performance bonding/surety company information as follows:
- Name: _____
 - Address: _____
 - Point of Contact: _____
 - Surety A.M. Best Rating: _____
- C. Provide documentation verifying that Contractor possesses a valid North Carolina General Contractor's license (Unlimited).
- D. Provide NC Board of Examiners for Engineers and Surveyors License No.: _____
- E. Has the Proposer or any of its Officers (including any experience and time while employed by another Proposer) been convicted of criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, or prevailing wages over the past 10 years?
- _____ YES _____ NO
- F. Has the Proposer or any of its Officers (including any experience and time while employed by another Proposer), Parent, Affiliates, or Subsidiaries had a judgment entered for contract default or been barred from bidding on public contracts over the last 10 years?
- _____ YES _____ NO
- G. Provide documentation verifying the Proposer's acceptable safety record. An acceptable safety record is defined as attainment and maintenance of an Experience Modification Rate (EMR) of 1.0 or less for at least two of the last three years and no more than 1.2 any one year of the last three.
- 2017 EMR: _____
 - 2018 EMR: _____
 - 2019 EMR: _____

Business Location Address: _____

City: _____

State: _____ Zip: _____

Contact Person: _____

Telephone: _____

2. Company was: _____ Sole Proprietor _____ Corporation
 _____ Partnership _____ Limited Liability Company

D. Current Officers and length of time with the Designer*:

Name	Title	Years
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*If Designer is the Proposer, indicate those authorized to sign contracts on behalf of the Proposer.

E. Name, address, and telephone number of Parent and each Subsidiary and Affiliate of the Designer.

1. Previous Name: _____

Mailing Address: _____

City: _____

State: _____ Zip: _____

Business Location Address: _____

City: _____

State: _____ Zip: _____

Contact Person: _____

Telephone: _____

2. Company was: _____ Sole Proprietor _____ Corporation
 _____ Partnership _____ Limited Liability Company

F. Bankruptcies: Has the Designer, its Parent, or any of its Subsidiaries ever had a bankruptcy petition filed in its

name, voluntarily or involuntarily within the last 10 years?

_____ YES _____ NO (If YES, list number of bankruptcies: _____)

G. Loans: Has Designer, its Parent, or any of its Subsidiaries defaulted on any loan agreement or financing with any bank, financial institution, or entity within the last 10 years?

_____ YES _____ NO (If YES, list number of defaulted loans: _____)

H. Has the Designer, its Parent, or any of its Affiliates or Subsidiaries ever failed to complete a project for any reason?

_____ YES _____ NO

I. Designer's Safety Submission Requirements:

1. Attach outline of Designer's written safety program.
2. Name and telephone number of the Designer's safety contact.

J. Does the Designer have a written design quality control/quality assurance program?

_____ YES _____ NO (If YES, provide an outline. Selected Design-Builder should be able to provide a copy upon award.)

K. Does the Designer have a written substance abuse policy?

_____ YES _____ NO (If YES, provide an outline. Selected Design-Builder should be able to provide a copy upon award.)

L. Has the Designer, its Parent, or any of its Subsidiaries been involved in any design-related lawsuit (other than labor or personal injury litigation) in the last 10 years?

_____ YES _____ NO (If YES, list number of lawsuits: _____)

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 4
GENERAL BACKGROUND OF BUILDER**

If Builder is a Joint Venture, provide requested information for all entities of the Joint Venture.

A. Builder Name: _____

B. Current Name, address, and contact information:

1. Full Name of Builder: _____

Mailing Address: _____

City: _____

State: _____ Zip: _____

Business Location Address: _____

City: _____

State: _____ Zip: _____

Principal Office Address: _____

City: _____

State: _____ Zip: _____

Local Office Address: _____

City: _____

State: _____ Zip: _____

2. Builder is: _____ Sole Proprietor _____ Corporation
 _____ Partnership _____ Limited Liability Company
 _____ Joint Venture

C. Has Builder operated under the current name for the last 10 years? ___ YES ___ NO

If not, attach a complete explanation for operating under a different name. List below each previous name or address, if any used in the last 10 years. Use attachments as needed.

1. Previous Name: _____

Mailing Address: _____

City: _____

State: _____ Zip: _____

Business Location Address: _____

City: _____

State: _____ Zip: _____

Contact Person: _____

Telephone: _____

2. Company was: _____ Sole Proprietor _____ Corporation
 _____ Partnership _____ Limited Liability Company

D. Current Officers and length of time with the Builder*:

Name	Title	Years
_____	_____	_____
_____	_____	_____
_____	_____	_____

*If Builder is the Proposer, indicate those authorized to sign contracts on behalf of the Builder.

E. Name, address, and telephone number of Parent and each Subsidiary and Affiliate of the Builder.

1. Previous Name: _____

Mailing Address: _____

City: _____

State: _____ Zip: _____

Business Location Address: _____

City: _____

State: _____ Zip: _____

Contact Person: _____

Telephone: _____

2. Company was: _____ Sole Proprietor _____ Corporation
 _____ Partnership _____ Limited Liability Company

F. Bankruptcies: Has the Builder, its Parent, or any of its Subsidiaries ever had a bankruptcy petition filed in its name, voluntarily or involuntarily within the last 10 years?

_____ YES _____ NO (If YES, list number of bankruptcies: _____)

G. Liquidated Damages: Has the Builder ever been assessed liquidated damages (LDs) in the past 10 years or served as an owner with a claim for additional compensation prepared by an attorney or a claims consultant,

excluding routine change order requests?

_____ YES _____ NO (If YES, list number of projects LDs were assessed: _____)

H. Loans: Has Builder, its Parent, or any of its Subsidiaries defaulted on any loan agreement or financing with any bank, financial institution, or entity within the last 10 years?

_____ YES _____ NO (If YES, list number of defaulted loans: _____)

I. Bonding:

1. Have performance or payment bond claims ever been paid by a surety for Builder, its Parent, or any of its Affiliates or Subsidiaries on any project in the last 10 years?

_____ YES _____ NO (If YES, list number of bonding claims: _____)

2. In the past 10 years, has any surety refused to bond the Builder, its Parent, or any of its Affiliates or Subsidiaries on any project?

_____ YES _____ NO (If YES, list number of bonding refusals: _____)

J. Has the Builder, its Parent, or any of its Affiliates or Subsidiaries ever failed to complete a project for any reason?

_____ YES _____ NO

K. Builder's Safety Submission Requirements:

1. Attach outline of Builder's written safety program.

2. Name and telephone number of the Builder's safety contact.

3. List any adversely resolved or pending citations, lawsuits, administrative proceedings, or hearings initiated by the Occupational Safety and Health Administration (OSHA) concerning project safety practices of the Builder in the last 10 years.

L. Does the Builder have a written construction quality control/quality assurance program?

_____ YES _____ NO (If YES, provide an outline. Selected Design-Builder should be able to provide a copy upon award.)

M. Does the Builder have a written substance abuse policy?

_____ YES _____ NO (If YES, provide an outline. Selected Design-Builder should be able to provide a copy upon award.)

N. Has the Builder, its Parent, or any of its Subsidiaries been involved in any construction-related lawsuit (other than labor or personal injury litigation) in the last 10 years?

_____ YES _____ NO (If YES, list number of lawsuits: _____)

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 6
AFFIDAVITS**

Proposers shall submit the applicable Affidavit found on the following pages.

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

FORM 6

AFFIDAVIT FOR CORPORATION

STATE OF _____

County of _____

_____, being duly sworn, deposes and says:

that he/she is _____ of _____, the Corporation submitting the attached _____ Proposal; that he/she has read the same and hereby warrants that, to the best of its knowledge and belief, the responses contained therein are true, accurate, and complete. The Owner, or its designated representative, may contact any entity or reference listed in this Proposal. Each entity or reference may make any information concerning the Proposer available to the Owner or its designated representative.

Sworn to before me this _____ day of _____, 20____.

Officer must sign here.

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

FORM 6

AFFIDAVIT FOR LIMITED LIABILITY COMPANY

STATE OF _____

County of _____

_____, being duly sworn, deposes and says:

that he/she is _____ of _____, the Limited Liability Company submitting the attached Proposal; that he/she has read the same and hereby warrants that, to the best of its knowledge and belief, the responses contained therein are true, accurate, and complete. The Owner, or its designated representative, may contact any entity or reference listed in this Proposal. Each entity or reference may make any information concerning the Proposer available to the Owner or its designated representative.

Sworn to before me this _____ day of _____, 20____.

Manager must sign here.

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

FORM 6

AFFIDAVIT FOR PARTNERSHIP

STATE OF _____

County of _____

_____, being duly sworn, deposes and says:

that he/she is _____ of _____, the Partnership submitting the attached Proposal; that he/she has read the same and hereby warrants that, to the best of its knowledge and belief, the responses contained therein are true, accurate, and complete. The Owner, or its designated representative, may contact any entity or reference listed in this Proposal. Each entity or reference may make any information concerning the Proposer available to the Owner or its designated representative.

Sworn to before me this _____ day of _____, 20____.

General Partner must sign here.

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

FORM 6

AFFIDAVIT FOR JOINT VENTURE

STATE OF _____

County of _____

_____, being duly sworn, deposes and says:

that he/she is _____ of _____, the Joint Venture submitting the attached Proposal; that he/she has read the same and hereby warrants that, to the best of its knowledge and belief, the responses contained therein are true, accurate, and complete. The Owner, or its designated representative, may contact any entity or reference listed in this Proposal. Each entity or reference may make any information concerning the Proposer available to the Owner or its designated representative.

Sworn to before me this _____ day of _____, 20____.

Authorized Representative must sign here.

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Sworn to before me this _____ day of _____, 20____.

Authorized Representative must sign here.

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Sworn to before me this _____ day of _____, 20____.

Authorized Representative must sign here.

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 7
COMMERCIAL NON-DISCRIMINATION CERTIFICATION**

Project: Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project –
Phase 1 and 2

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:

1. 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.
2. 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*.
3. 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.
4. 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.
5. 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.
6. 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 Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

Name of Company

Signature of Company's Authorized Official

Date

Print Name

Title

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 8
E-VERIFY CERTIFICATION**

Project: Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project –
Phase 1 and 2

This E-Verify Certification is provided to the City of Charlotte (the “City”) by the company signing below (“Company”) as a prerequisite to the City considering Company for award of a City contract (the “Contract”).

1. Company 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, Company certifies that:
 - a. If Company has 25 or more employees working in North Carolina (whether now or at any time during the term of the Contract), Company has complied and will comply with the E-Verify Requirements with respect to Company employees working in North Carolina; and
 - b. Regardless of how many employees Company has working in North Carolina; Company 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. Company 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 Company and Company 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 Company or any of its subcontractors, including without limitation any Losses incurred as a result of the Contract being deemed void.

Name of Company

Signature of Company’s Authorized Official

Date

Print Name

Title

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 9
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

Project: Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project –
Phase 1 and 2

Company: _____

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

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**FORM 10
BYRD ANTI-LOBBYING CERTIFICATION**

Project: Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project –
Phase 1 and 2

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ (the "Company") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Print Name

Address

Authorized Signature

City / State / Zip

Date

**Request for Qualifications for
Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
(FY21-DB-03)**

**EXHIBIT 1
CHARLOTTE WATER DESIGN-BUILD REAL ESTATE PROCESS**

SCOPE OF SERVICES

The Design-Build Team (DB Team) shall perform all required acquisition, relocation, appraisal, review appraisal, various legal, title and transaction closing services to support the project schedule. All service assignments shall be performed and prepared in conformance with the current City of Charlotte Policies, Procedures and Guidelines as well as all applicable federal, state and local laws, rules and regulations. All appraisal services shall be performed and prepared in conformance with the current Uniform Standards of Professional Appraisal Practice (USPAP), other applicable local, state, federal laws and any additional requirements set forth by the City of Charlotte c/o Charlotte Water (CLTW).

Note: The specific processes to facilitate the above scope may be updated periodically. Any updates will be communicated to the Design-Build Team in a timely matter.

1 ROLES AND RESPONSIBILITIES

1.1 DESIGN BUILD TEAM

The Design Build Team (DB Team) refers to the contractor and their sub-contractors performing real estate work for the Project. The lead Design-Build Project Manager or Director is responsible for assigning the following roles and for making sure that all team members understand and follow this scope of services.

1. Design-Build Real Estate Manager (DBRE Manager): The DBRE Manager will act as the first point of contact for questions about the real estate phase of the project and will have ultimate responsibility for real estate acquisitions on the Project.
2. Acquisition Firm: The Acquisition Firm is responsible for managing parcel acquisitions. A Lead Acquisition Agent shall be identified in each project, who will be the single point of contact for questions on the status of acquisitions.
3. Lead Appraisal Firm: Provides formal appraisals for requested properties.
4. Review Appraisal Firm: Provides review appraisal documents for requested properties.
5. Real Estate Legal Firm: Provides legal, title and closing services for requested properties.

1.1.1 Subcontractors

The Proposer must list all proposed subcontractors, if any, in the table provided below. No change in the proposed subcontractors listed herein will be allowed without the express written consent of the City of Charlotte. All proposed subcontractors must be able to demonstrate their ability to perform the work proposed to the complete satisfaction of City of Charlotte. All subcontractors must also provide a Compensation Sheet that provides the pricing and fee structure for the work performed. The City of Charlotte shall have the ability to direct the work of, and communicate directly to, all real estate subconsultants since the property is being purchased in the City's name.

1.2 CITY OF CHARLOTTE

The City of Charlotte c/o Charlotte Water (CLTW) will assign the following roles for this scope of services. CLTW reserves the right to change the assigned staff, team or firm at any point during this Project.

1. CLTW Asset Coordinator: In the following text, the City of Charlotte representative is understood to be the CLTW Asset Coordinator unless otherwise communicated. The CLTW Asset Coordinator is the main contact for questions about the Design-Build Real Estate Process. They will facilitate and monitor review and approval steps in the process.

Contact Information: Olga Mazets
Olga.Mazets@charlottenc.gov
980-257-7568

2. CLTW Project Manager: The CLTW Project Manager (CLTW PM) will work with the DBRE Project Manager to answer questions about the real estate phase of the project. Specific duties include:
 - a. Agent Research NTP - The agent research NTP is the date when the agent is tasked to start pre-acquisition research and reach out to the property owners of each parcel (limited title search, initial valuation and initial contact). When the NTP is provided, there should be reasonable confidence that the parcel will be impacted.
 - b. The CLTW Project Manager has final approval authority of all special provisions before they are finalized. Pre-approved special provisions may be negotiated with the property owner prior to CLTW Project Manager approval.
 - c. The CLTW Project Manager will approve all real estate payment requests.
3. QA/QC Reviewer: A QA/QC Review Firm or Team will be introduced by the City of Charlotte. The QA/QC Reviewer(s) will ensure that all acquisitions are in conformance with the current City of Charlotte Policies, Procedures and Guidelines as well as all applicable federal, state and local

2 CLTW DESIGN-BUILD REAL ESTATE POLICIES

The real estate processes are outlined in documents stored on the following public website:

<https://app.e-builder.net/public/publicLanding.aspx?QS=d227901277db4935b6a6a7963b94ec93>

3 GENERAL SERVICES - DESIGN-BUILD TEAM

The DB Team will be responsible for acquiring all the property rights required for each project assignment. The acquisitions will include but is not necessarily limited to: Property Acquisitions, Permanent Easements and Temporary Construction Easements. Property acquired by the City of Charlotte may be accomplished either by donation, negotiation, administrative settlement, condemnation or inter-governmental transfer.

CLTW will implement quality control and quality assurance measures to ensure that all acquisitions are in conformance with the current City of Charlotte Policies, Procedures and Guidelines as well as all applicable federal, state and local laws, rules and regulations.

3.1 INITIAL PROJECT PREPARATION – TRACKED IN E-BUILDER

All real estate documentation, tracking spreadsheets and negotiation diaries shall be stored in the e-Builder online project management software.

3.2 MEETINGS

The DB Team may be required to attend one or more of the following:

- Real Estate Kick-off Meeting;
- Public Meetings, as necessary;
- Project Status Meetings.

3.3 REAL ESTATE DOCUMENTATION

The City of Charlotte will provide the Acquisition Firm with all associated forms to be used.

All acquisition documents (exhibits, plans and legal descriptions) shall be peer reviewed by the producing firm prior to releasing the documents for acquisition. It is expected that the Acquisition Agent will review all acquisition documents prior to making a formal offer to the property owner. Acquisition documents shall be stored in in e-Builder.

3.3.1 Easement Maps – Exhibits

The DB Team shall provide a survey exhibit to illustrate easement areas being taken, for attachment in the deed. The proposed easement shall be surveyed by a North Carolina Professional Land Surveyor. The surveyor shall provide a signed and sealed map of the easement to the DB Team. Any exhibits being attached to a deed for recording must contain the following note:

"THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS."

3.4 CONDEMNATION

Any condemnation of real property will be handled by the City of Charlotte; provided, however, the City of Charlotte may contract for the condemnation of any real property interest with a third-party.

The DB Team must give the City of Charlotte at least 60 days' notice before access is needed to a property that requires condemnation. Condemnation may be required when the following conditions exist:

- Title defects which preclude acquisition by voluntary conveyance;
- Multiple ownership and lack of unanimity among the owners; or

- Location of property owner is unknown.

4 DESIGN-BUILD REAL ESTATE MANAGER (DBRE MANAGER)

The DBRE Manager will act as the single point of contact for the design and construction communications and will have ultimate responsibility for real estate acquisitions on the Project.

The DBRE Manager's responsibilities include:

1. Identifying and communicating project schedules and key milestone deadlines for real estate acquisitions.
2. Providing the QA/QC Reviewer with the impacted parcels for preliminary analysis, file creation and market data development.
3. Managing the list of impacted parcels by adding and removing parcels to the scope as the design progresses. The following information will be the responsibility of the DBRE Manager to supply to the project team, and will be tracked in e-Builder:
 - a. Acquisition difficulties (ex. FEMA, wetlands, LWCF Grant)
 - i. Note any required lead times.
 - b. Priority
 - c. Required access date
4. Assisting the lead Acquisition Agent in assigning tasks to other DB Team members and subconsultants.
5. Ensuring that all acquisition tasks are being performed in a timely manner. Ensure that key milestone deadlines are met by the DB Team.

5 ACQUISITION FIRM GENERAL SERVICES

The DB Team shall include a Real Estate Acquisition Firm with a minimum of five (5) years of experience working with municipal entities in acquisitions, relocations and condemnations.

The Acquisition Firm is responsible for managing and completing all parcel acquisitions. A lead Acquisition Agent shall be identified in each project and will be the single point of contact for questions on the acquisition status.

ACQUISITION PROCESS

Work shall include, but is not necessarily limited to, the following:

1. Prepare and maintain REA processes in e-Builder, which track the status of each parcel. The REA processes must be updated on a weekly basis.
2. Create and maintain individual parcel folders in e-Builder. The folders shall contain specific parcel documentation related to the acquisition.
3. The Acquisition Firm will complete the following pre-acquisition research tasks once the agent research NTP is issued by the CLTW PM. The Acquisition Firm is not to reach out to property owners until the agent research NTP is issued.
 - a. Perform a Preliminary Title Investigation according to CLTW Policies.

- b. The Acquisition Firm is required to provide an initial valuation for each parcel acquisition per CLTW Policies. All initial estimates must be approved by the QA/QC Consultant and the CLTW PM before being presented to the property owner. The Acquisition Firm will provide the property owner a Compensation Worksheet that sets forth the amount established as just compensation and the basis of the determination.
- c. Establish early contact with property owners to resolve title issues and to discover any specific property concerns that could affect the project alignment. Acquisition Firms must attempt to contact all property owners by:
 - i. Sending introductory letters via regular and certified mail (template to be provided by the City of Charlotte),
 - ii. Making several site visits,
 - iii. Leaving door hangers and business cards,
 - iv. Seeking information from neighbors,
 - v. Searching the internet,
 - vi. Obtaining title abstracts, and
 - vii. Leaving voice messages.
- 4. Review project plans and other design documentation to support technical discussions about the project to the property owners. Prepare subsequent documentation, like aerial exhibits from google maps, as necessary to describe the easement on the property.
- 5. Provide feedback from property owners to the DBRE Manager, offering suggestions to help minimize potential damages.
- 6. Keep a cumulative negotiator's diary on each property owner/parcel. All contact with property owners must be thoroughly documented and project files must be updated weekly. The diary will be stored in the appropriate parcel folder in eBuilder.
- 7. Document and submit all "special provisions" requested during negotiations with the property owner(s) to the CLTW Project Manager for approval prior to presenting to the property owner(s) for signature.
 - a. If fixtures considered as realty are being acquired separately, and the owner of the land involved disclaims all interest in improvements of a tenant, a separate written offer will be provided to the tenant for the improvements.
 - b. If it is determined that personal property will be displaced by the projects, the Acquisition Firm will be responsible for negotiating the relocation activities, as directed by the CLTW Project Manager and the DBRE Manager.
- 8. Order title abstracts, appraisals and appraisal reviews as necessary. Title abstracts are not required for easements donated from other government organizations (Mecklenburg County or townships). Appraisals will be requested through the QA/QC Reviewer.
- 9. Conduct negotiations with a minimum of three (3) in-person calls on each parcel (if local) and a minimum of three (3) detailed communications for out of town property owners prior to submitting to the City of Charlotte for condemnation due to lack of response.

All negotiations will be conducted in good faith and in accordance with the highest standards of professional and ethical conduct. Diligent efforts will be made to reach a

settlement with each property owner. The City of Charlotte will determine the sufficiency of negotiations before acceptance for condemnation.

The City of Charlotte will not take an action that is coercive in nature in order to compel agreement on price.

A policy outlining negotiation allowances is available for the agent to use without prior approval. Any questions during negotiation shall be communicated to the QA/QC Reviewer. Agent(s) are required to document all attempts at negotiation in the negotiator's diary.

10. Present the preliminary offer to the property owner in an Easement Option agreement according to CLTW policies.
11. Compile and review acquisition documents for either settlement or closing.
12. Send letter to property owner to formally notify the City's intent to exercise the Option Agreement.
13. Schedule closings with the closing attorney.
14. Compile and review acquisition documents for condemnation according to the latest checklist. Assist as needed during condemnation proceedings.
15. All check(s) for acquisitions will be issued by City of Charlotte and sent directly to the property owner. All checks for relocation payments will be hand delivered or mailed certified return receipt, by the acquisition firm. In the event a check is not cashed and has expired, the Acquisition firm shall contact the property owner to rectify.

5.2 ACQUISITION FIRM - GENERAL ITEMS

1. Provide on-call translation/interpretation service provider(s) readily available for language barrier communications as needed to ensure property owners/tenants have complete understanding of the acquisition/relocation process. These services are eligible for reimbursement upon receipt of proper documentation.
2. In the event that real estate questions or issues arise, the Acquisition Firm shall first communicate with the QA/QC Reviewer to determine a path forward. Any questions or issues that require legal council shall be immediately communicated to the CLTW Asset Coordinator.

6 LEGAL, TITLE AND TRANSACTION CLOSING SERVICES

The DB Team shall include a real estate legal firm(s) with at least one (1) licensed attorney who is legally permitted to practice real estate law in North Carolina and at least one (1) abstractor to prepare title reports. Attorneys must have a minimum of seven (7) years of experience in real estate, both commercial and residential. Proof of experience and a Compensation Sheet must be provided to the CLTW Asset Coordinator for review before executing any subcontracts. The Compensation Sheet shall be provided in the following format:

Service	Fixed Unit Cost
Full Title Examination	
Full Title Examination (Condominium)	
Limited Title Search (Current Owner)	
Title Update over 90 days	
Real Estate Closing (Title Examination paid separately)	
Drafting Legal Documents	
Legal Documents Review	

The City agrees to pay an agreed upon price for special projects that may arise during the scope of this contract.

Special projects	Hourly rate

Title search reports are not required for easements donated from other government organizations (Mecklenburg County or townships).

The DB Team shall follow CLTW policies for ordering services from the real estate legal firm(s).

6.1 TITLE SERVICES

6.1.1 Full Title Examination

The Abstractor shall conduct a "Complete Title Search" that will include a full title examination (30 + years). It will involve research on all current title holders and previous owner of the subject property. The chain of title including the current deed shall be reported along with open mortgages, liens and judgments recorded against the property. Easements, CC&Rs (Covenants, Conditions & Restrictions), bankruptcies, agreements affecting the subject property shall be also included.

A complete title search is expected to take 30 calendar days or less.

6.1.2 Full Title Examination - Condominium

When a condominium is encountered within the limits of a project, the Abstractor must:

- a. Limit title search to common areas only unless specified in the REQUEST that a title search must be performed for each unit owner.
- b. Include within each title report a copy of the Declaration of Condominium, Articles of Condominium, Bylaws, where applicable, the name and address of the Condominium Association and information addressing if and by what means the Declaration of Condominium authorizes conveyances of real property.
- c. Prepare no Title Search Reports on individual units within the condominium unless specifically requested by the CLTW Asset Coordinator.
- d. Attach the notation, "No Search Made as to Individual Units", on the Title Search Report.
- e. If a title search is requested for each unit owner, provide special pricing for high volume searches

[HOA's – provide information outlining by what means the HOA can convey real property interest and who has authority to execute on behalf of the HOA.]

6.1.3 Limited Title Search

The Abstractor shall conduct a limited title search that will include a current owner title examination and the latest deed. The Abstractor shall research back to the last sale of the property.

A current owner search is expected to take 14 calendar days or less.

6.1.4 Title Update

The Abstractor shall provide all documents of record within the time period of the update. A title update is expected to take 7 calendar days or less.

6.1.5 Completed Work

All reports shall be reviewed and signed by the firm's Attorney prior to sending to the requestor. The completed report may be submitted electronically in PDF format with separate attachments for the title opinion, the chain of title, and the documents that relate to the exceptions, unless instructed otherwise.

6.2 REAL ESTATE CLOSINGS

The Attorney will coordinate closings on behalf of the City for the purchase of any real estate property for which closing by the City is requested. The attorney shall:

1. Prepare the deed(s) or agreement(s) required for closing,
2. Advise the City on the risk associated with defects identified in the title examination, and present suitable options,
3. Schedule closing,
4. Obtain all necessary releases, upon request
5. Obtain title insurance, only if title insurance is requested,
6. Hold closing payment in escrow and disburse funds after recordation,
7. Update the title examination and record the deed(s) or agreement(s).

6.3 OTHER LEGAL SERVICES

6.3.1 DRAFTING LEGAL DOCUMENTS

The Attorney may be asked to draft legal documents including but not limited to easement agreements, special provision agreements, deeds, right of entry agreements, lien waiver affidavits and ownership affidavits.

6.3.2 LEGAL DOCUMENTS REVIEW (solely- outside of closing requests)

The Attorney will review legal documents including but not limited to easement agreements, special provision agreements, deeds, right of entry agreements. The Attorney will be expected to review any changes to legal documents that are requested by the property owner and explain the legal ramifications to the City.

7 APPRAISAL AND APPRAISAL REVIEW SERVICES

The Design-Build Team's appraisal and appraisal review firms reviewers *must* have been selected by the City of Charlotte General Services' most recent RFP (RFP #2020-472). The selection of appraisers who can keep pace with the schedule without sacrificing internal quality control is critical.

These appraisal services could include, but are not limited to, real property appraisal reports, specialty appraisal reports (eg. Fixtures and equipment), appraisal revisions, special market impact studies, and appraisal updates as needed.

A QA/QC reviewer will be assigned by the City of Charlotte to sign off on the Appraisal and Review Appraiser's reports to concur with the estimated fair market value for the subject property being appraised.

The DB Team shall follow CLTW policies for ordering services from the appraisal and appraisal review firm(s).

7.1 FIRM(S)

The appraisal subcontractors shall perform or have performed all services necessary to make an estimate of market value for parcels identified by the DB Team or the City of Charlotte and shall deliver in electronic form (PDF) for each parcel to the requestor and the City of Charlotte.

1. Meetings: The Appraisal firm may be required to attend kickoff / strategy meeting(s) to discuss overall goals as it applies to the project scheduling, early plan review, appraisal strategy, consistency, review process etc.
2. An objective overview of appraisal & valuation consistency among the project appraisers needs to be given a high priority to ensure property owners are compensated equitably. If more than one appraisal firm is to be used for the project, the planning of a consistency workshop or valuation mapping strategy between the consultants and the Design-Build Team and/or the City of Charlotte's Appraisal Services Manager is recommended. The firm must establish a tracking and quality control system to manage the appraisal process including maintaining an Appraisal Consistency Map that indicates the appraised values as the project progresses. The map should be updated as needed and emailed to the project reviewers so they are aware of the surrounding appraised values that were completed by each firm (where applicable).

3. The Appraisal Firm should carefully examine the properties along the project corridor and classify them according to the current or potential highest and best uses before assigning appraisals. Likewise, pairing an appraiser with a particular type of appraisal or category with their particular experience or expertise can facilitate consistency.
4. Inspection of the Property: Appraisers will conduct a site visit to inspect the property. The Appraisal firm will make every reasonable effort to contact the property owner prior to site inspection. The appraisal company must allow the property owner or representative to accompany the appraiser on the site inspection. The appraisal company is required to document their efforts to reach the property owner or representative. If the property owner or representative does not accompany the appraiser on the site inspection, the appraisal company must document the reason.
5. Upon identification of the impacted parcels the Design-Build Team will provide the appraisers with information for preliminary analysis, file creation and market data development. This can facilitate the final appraisal analysis as the required design percentage is completed. The project plans should be adequate enough to show the taking and the impacts (easements, plan view and profiles etc.) and must be defined in order for the formal valuation to proceed.
6. The Appraisal Firm shall supply a subset of comparable properties and other relevant sales data for the subject properties to assist the Acquisition Firm in preparing initial property valuations.
7. Invoicing can be based on the completion or percentage of major, well defined tasks in the schedule of fees (including advanced project review, file creation and market data development). This option can allow for early project reference, phased development and data gathering for the appraisal firm.
8. Support Services: Professional and specialty services beyond the professional ability of the appraiser may be required to complete the appraisal report. Supplemental professional services include, but are not limited to, sign specialists, aerial photographers, fixture appraisers and general contractors. In these instances, the appraisal company shall acquire the services of subcontractors as necessary to support their appraisal.
9. Litigation Support Services: The appraisal company may be required to perform litigation support services. Litigation Services may include, but are not limited to, pre-trial or pre-hearing preparation, participation in mediation proceedings, preparation of court exhibits, attendance at depositions, attendance at pre-trial hearings, attendance at condemnation hearings, and/or any other service deemed necessary by the City Attorney.
10. Appraisals for Property Owners: The Appraisal Consultant and/or any associates agree not to engage in any work or take any actions that would present a conflict of interest to the City.
11. Schedule: The average length of time to perform an appraisal is expected to be thirty (30) calendar days or less, unless otherwise agreed to by the City of Charlotte.

7.1.1 Appraisals – General Requirements

Appraisal: A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. The reporting requirements, at a minimum must satisfy USPAP Standards 2.1 and 2.2.

7.1.1.1 Intended User

The intended user of the appraisal must include the City of Charlotte and their assigns for the use in determining the value of full and partial acquisitions.

7.1.1.2 Purpose and Intended Use

The purpose of the appraisal is to estimate the market value of the subject property immediately before the project. In instances of a partial acquisition, the estimated market value of subject after the acquisition must be provided.

The intended use is to estimate market value of the parent tract, the property to be acquired, the remaining property, the damages, and special benefits, if any as of the specified date of valuation, for the proposed acquisition of the property rights specified. It includes identification of an abbreviated parent tract, when applicable.

7.1.1.3 Market Value Definition – or Compatible

The most probable price in cash, as of a specified date, financial arrangements equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, in an arms-length transaction with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

7.1.1.4 Final Conclusion of Fair Market Value of the Whole/Before Property

Described additional information - this item may be included in reconciliation if tenant owned improvements (other than billboards) state:

- Contributory value to whole as though not leased;
- Appraisal of Outdoor Advertising Billboards Affected by the Acquisition.

7.1.1.5 Project Impact on Market Value

In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. If necessary, the appraiser may cite supplemental standards rules under USPAP to ensure compliance while following this Uniform Act requirement

7.1.1.6 Partial Take Considerations

1. Part Taken (Description and allocation of Land and Improvement Values);
2. The Remainder (The appraisal supports and reporting requirements follow the intent of those for the whole (before) property appraisal);
3. Appraisal After Acquisition;
4. Appraisal Problem;
5. Thorough and detailed description of Remainder;
6. Detailed Effect of Acquisition on Remainder;
7. Highest and Best Use of Remainder;
8. Valuation of Remainder;
9. Grid reflecting after value condition
10. Reconciliation of Remainder Value Indications;
11. Cost;

12. Sales Comparison;
13. Income;
14. Explain reconciliation;
15. Approaches to value omitted as not applicable may be included in Reconciliation.

7.1.1.7 Final conclusion of fair market value of the remainder property

1. Damages to the Remainder (If no damages, so state);
2. Compute and Support;
3. Non-comparable Causes;
4. Include legal instructions;
5. Cost to Cure;
6. Insignificant (minor);
7. Significant;
8. Steps Required;
9. Valuation of Remainder Uncured;
10. Valuation of Remainder Cured;
11. Special Benefits (Explain and support);
12. Environmental contamination cleanup costs as applicable;
13. Summary of Values;
14. Addendum (Include only applicable items);
15. Neighborhood map - show Project;
16. Maps of comparable sales - show Project and subject;
17. Copies of comparable sales (data) sheets used in direct comparison;
18. List of trade fixtures and equipment considered to be real property, and contributory value of each item;
19. Contractors, or Specialist's estimate;
20. Copy of last instrument of conveyance;
21. Initial Contact Notification Letter;
22. Qualifying and Limiting Conditions;
23. Appraiser Qualifications;

7.1.1.8 Market or Specialized Studies:

Studies performed by the appraiser, whether included in the original data book as a supplementary study, must comply with the intent of the USPAP in that:

1. The purpose, scope, methodology, and techniques of the study must be concisely described;
2. Persons, other than the Appraiser, who provide significant contribution to the study must be named and identified;

3. Market data must be verified and the source of verification should be reported as described in Sales Data Sheet requirements; and,
4. The appraiser's analysis of information and conclusions based on the study must be described and supported to the same extent as required herein for other appraisal conclusions.

If a specialist's study or estimate is obtained, the report must be included in the Addenda. The appraiser's estimate of the specialty item must reflect the item's contribution to market value, which may or may not be the same as the specialist's estimate. The appraiser must explain how such item contributes to market value.

Assumptions and Limiting Conditions should be included in the Addenda to the report, and must not be generic, but should be applicable to the appraisal being prepared.

If the appraiser unilaterally makes any assumptions or imposes any limitation that affects market value, the report must adequately support an estimate of market value "as is" or without regard to the assumption or limitation. Failure to do so may render the report unacceptable.

7.1.2 Appraisals - Reporting

The City of Charlotte's Summary Sheets must be included with each narrative report.

The reporting format for the Appraisal Report required may necessitate significant detail or moderate detail depending on the scope required for the assignment. Reports may be ordered for any type of appraisal issue, including partial acquisition with consideration of severance damages and special benefits. The Appraisal Report may require additional detail due to more complicated appraisal issues where there may be poorly defined or limited market information, where the acquisition may have severe impact, or in other situations when a high degree of detail is desired. Updated Appraisal Reports may be required at the discretion of the City of Charlotte. In rare instances, restricted reports may be requested. The Transmittal Summary Appraisal may be used in certain instances where no associated damages to the remainder greater than the cost to cure are estimated.

Appraisal Reports with moderate detail may be ordered for any type of appraisal issue, including partial acquisitions with consideration of severance damages and special benefits. The Appraisal Report with moderate detail lends itself to uncomplicated appraisal issues where there is well-defined market information and the level of detail can be tailored to the scope of the assignment.

7.2 APPRAISAL REVIEW FIRMS

A QA/QC Reviewer will be assigned by the City of Charlotte to the Project to examine the Consultant's Appraisal report and the Consultant's Review Appraisal report. Upon successful examination and concurrence, the QA/QC Reviewer will sign off on the consultant's review appraisal report to establish the fair market value for the subject property being appraised.

7.2.1 Appraisal Review – Services to be Provided

Review Appraisal Services are required in connection with the Project(s) and are a key element of quality control. Services shall include a technical review of appraisal reports and preparation of written technical review appraiser reports (RAR) in conjunction with estimates of market value and just compensation for real property interests. Field reviews with inspection of the subject property and comparable sales should be conducted as necessary to achieve credible assignment results in certain assignments. Other analysis assignments relating to specifically identified needs may be requested, and include, but are not limited to:

1. the review of project or parcel cost estimates;

2. specialized studies of project effect or influences;
3. market activity, conditions, trends or adjustments;
4. financing;
5. feasibility;
6. property owner counter appraisals;
7. analysis, opinions and conclusions relating to such activities.

Appraisal consistency among the project appraisers needs to be given a high priority to ensure property owners are compensated equitably. Reviewers are to maintain a value tracking spreadsheet for review of project consistency.

Review appraisers shall assist and facilitate valuation consistency via internal quality control to monitor values of like properties between the appraisers.

Litigation Support Services: The appraisal firm may be required to perform litigation support services. Litigation Services may include, but are not limited to, pre-trial or pre-hearing preparation, participation in mediation proceedings, preparation of court exhibits, attendance at depositions, attendance at pre-trial hearings, attendance at condemnation hearings and/or any other service deemed necessary by the City Attorney.

Review of Acquisition Map Revisions: A revision that does not significantly change the value of the taking or cause a change in a damage estimate in the opinion of the Review Appraiser must be explained in the Review Appraisal Report and reflected in the Review Appraiser's value conclusion. The appraiser must be notified in writing of the revision.

Conversion of Partial to Whole Acquisition: When the Review Appraiser is advised that the City of Charlotte elects to acquire the whole property, the Review Appraiser will issue an alternate Review Appraisal Report concluding the value of the whole property as estimated in the approved report. If the Review Appraiser significantly changes the value of the whole property, the Review Appraiser must prepare a Review Appraisal Report.

Review Appraisal Updates: The Review Appraiser must comment as to whether the period of time has affected value. Update of value, if appropriate, should be based on the appraiser's time analysis or other market information available to the Review Appraiser.

Schedule: The average length of time to perform a review appraisal is expected to be fifteen (15) calendar days or less, unless otherwise agreed to by the City of Charlotte.

7.2.2 Appraisal Review – General Requirements

The appraisal firm shall perform review appraisals, as necessary, on any assignments set forth by the DB Team or the City of Charlotte. The review appraisal report is a supplementary critique intended for use in conjunction with the appraisal report under review. It is not necessary that any difference in opinion of value be set forth in a separate appraisal report. The opinion of value may be set forth in a RAR.

1. Identification of subject property
2. Tabulation of the key appraisal information - purpose; appraiser; date of record; area of take; land, improvement, damages and total valuation amounts; land use; and reviewer.
3. Certification by Review Appraiser

4. Recommended compensation
5. Brief discussion of appraisal components
 - a. Identification of the report under review
 - b. Identification of the real estate and real property interest appraised
 - c. Effective date of the appraisal
 - d. The date of the review
 - e. Extent of the review conducted
 - f. Completeness of the report
 - g. Adequacy and relevance of the data
 - h. Propriety of adjustments to the data
 - i. Appraisal methods and techniques used
 - j. Discussion of analysis, opinions, conclusions in the report
 - k. Analysis of the report by assigned appraiser
6. Provide a review appraiser conclusion analysis
7. Provide an itemized breakdown of the land, improvement, severance damages, cost to cure and total valuation amounts.
8. Review appraiser shall perform and document a physical inspection of the subject property and comparable sales, as necessary, to achieve credible assignment results.

7.2.2.1 Intended User

The intended user of the appraisal must include the City of Charlotte and their assigns for the use in determining the value of full and partial acquisitions. The property rights acquired will include fee simple and easements (both permanent and temporary) and any applicable improvements.

7.2.2.2 Purpose and Intended Use

The purpose of the appraisal is to estimate the market value of the subject property immediately before the project. In instances of a partial acquisition, the estimated market value of subject after the acquisition must be provided.

The intended use is to estimate market value of the parent tract, the property to be acquired, the remaining property, the damages, and special benefits, if any as of the specified date of valuation, for the proposed acquisition of the property rights specified. It includes identification of an abbreviated parent tract, when applicable.

7.2.2.3 Additional Requirements for Reviewing:

Departure from sections (a) through (f) of USPAP Standards SR 3-1 is not permitted. USPAP Standards Rule 3 requires preparation of a separate, written, review report. Both Ethics and Competency provisions of the USPAP also apply to the Review Appraiser. A review appraiser may prepare a Value Determination Appraisal or a Review Appraisal Report if a different value conclusion is arrived at after completing the review of an appraisal report. A Clarification of Comment on Standards Rule 3-1 (f), adopted by the Appraisal Standards Board as SMT-1, allows a Review Appraisal Report to be produced in conformity with Standards Rule 3-2. To do so, for review reports, the Review Appraiser must observe the following:

- 8 Those items in the original (reviewed) report(s) which are in compliance with the USPAP, and with which the Review Appraiser can agree, should be incorporated by reference in the Review Appraiser's statement or report.
- 9 Those items not in compliance, or with which the Review Appraiser cannot agree, must be explained and handled by the Review Appraiser in the review statement/report in conformity with Standards Rule 3-2.
- 10 Other data that the Review Appraiser considers in arriving at an estimate of value must be presented and explained in the review statement or report in accordance with the USPAP and FTA Regulations.

7.2.2.4 Value Determination (Minor Change of Reported Value)

Value Determinations are appropriate when a minor change made by the Review Appraiser can avoid a delay in transmittal of the Recommended Just Compensation to the Acquisition Firm, when the appraisal cost of an insignificant change can be delayed until a comprehensive update is required, or for other management purposes.

The Review Appraiser must state the limitations or differences in results from the limited assignments. This can be done by stating the appropriate reason(s) and, if applicable, including a brief discussion. If the Review Appraiser's value conclusion is significantly different from the fair market value estimated in any of the appraisals received, a Review of the Review Appraisal is required.

Minor corrections that result in a change of value by the Review Appraiser must be explained on the Review Appraisal Report. Value Determinations are considered to be appraisals for the purpose of acquisition, and require concurrence by the Appraisal Manager.

7.2.3 Review Appraisals – Divergence Resolution

The Review Appraiser must consult with the QA/QC Reviewer when it appears applicable. Such consultation is appropriate when there is divergence between or among appraisals submitted as to:

- Determination of the Larger Parcel
- Highest and Best Use premise
- Selection and analysis of approaches to value
- Selection of most appropriate approach to value
- Selection of data used and treatment of that data

7.2.4 Review Appraiser's Value Determination

A Review Appraiser's Value Determination is appropriate where there is:

- Addition or omission of items of value
- If the Review Appraiser discovers that the appraiser has improperly added non-compensable value or omitted an item of value, and the addition or omission does not significantly affect the appraiser's value estimate, the Review Appraiser is authorized to correct the appraiser's value and to provide an explanation in the Review Appraisal Report. The appraiser must be notified in writing of the action taken for the appraiser's future consideration if requested to update the appraisal.

In arriving at their own estimates of value, Review Appraisers may incorporate valid market data available, including data contained in any appraisals received for review. Reviewers must personally

verify any data obtained on their own initiative and provide written analyses of the data plus reasoned justifications or explanations supporting their conclusions.

7.2.5 Review Appraisal – Reporting

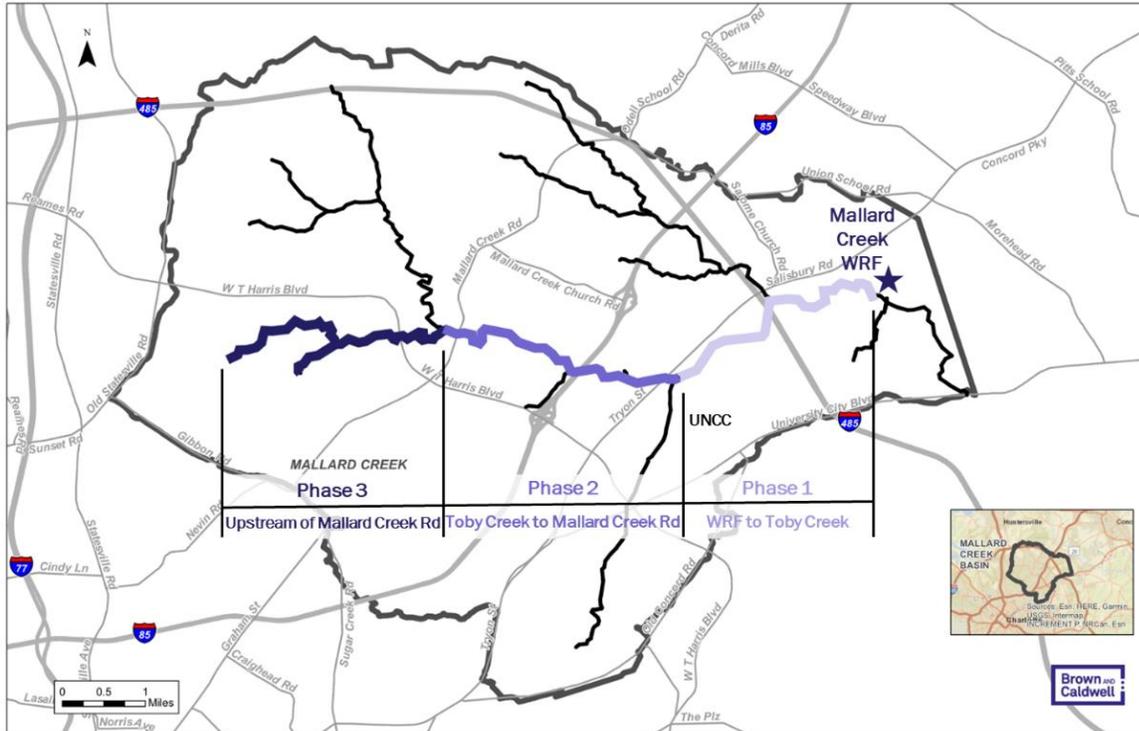
A Review Appraisal Report must comply with the Uniform Standards of Professional Appraisal Practice. Supplemental certification statements required by professional organizations may be added on a separate, signed page.

Upon completion of the review and any necessary corrections or modifications to the appraisal report, the review appraiser shall submit their conclusions along with the appraisal report to the requester and the QA/QC Reviewer. The QA/QC Reviewer will review for concurrence of all appraisal and appraisal review reports.

**Request for Qualifications for
 Progressive Design-Build Services for Mallard Creek Interceptor Improvement Project – Phase 1 and 2
 (FY21-DB-03)**

**EXHIBIT 2
 MALLARD CREEK INTERCEPTOR IMPROVEMENT MAPS**

Figure 1: Mallard Creek Interceptor Improvement Phases



(See Next Page)

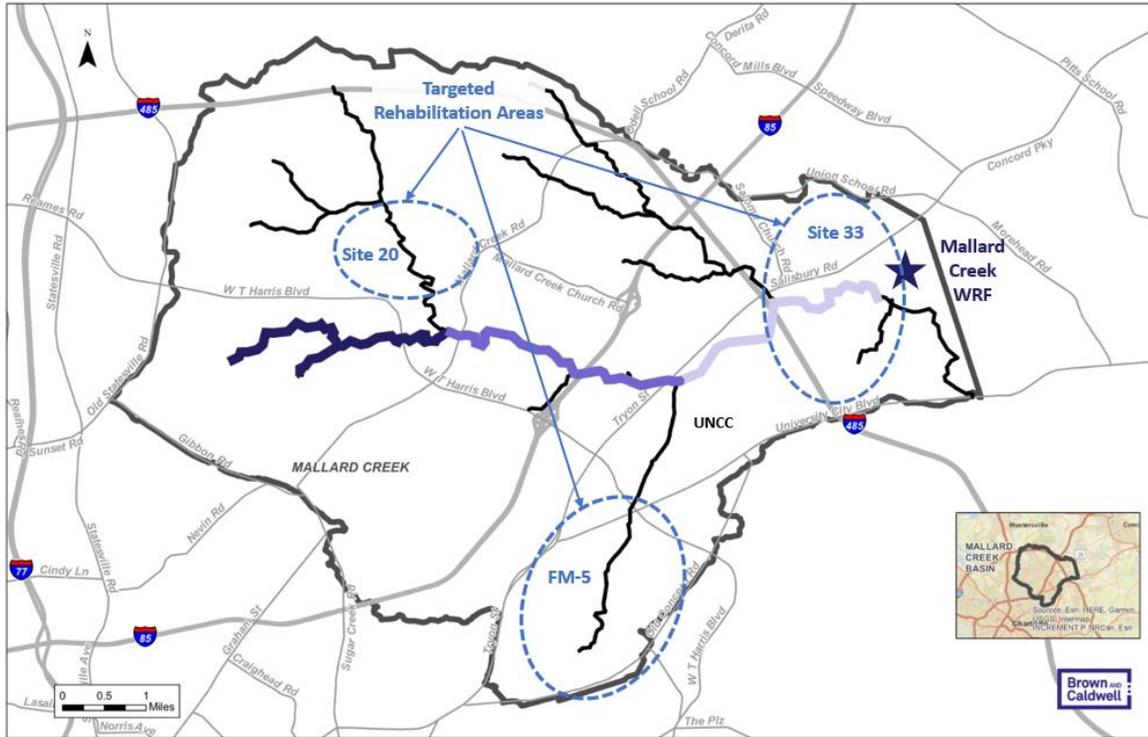
Figure 2: Mallard Creek Interceptor Improvements – Phase 1



Figure 3: Mallard Creek Interceptor Improvements – Phase 2



Figure 4: Mallard Creek Interceptor Improvements – Potential Rehabilitation Areas





Progressive Design-Build Agreement for Water and Wastewater Projects

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

OWNER:

City of Charlotte
5100 Brookshire Boulevard
Charlotte, NC 28216

DESIGN-BUILDER:

(Vendor #)

PROJECT:

CONTRACT:

Modifications to this agreement are as follows:

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

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

Article 1

General

- 1.1 Duty to Cooperate. 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 this Agreement.
- 1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract").
- 1.3 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2

Design-Builder's Services and Responsibilities

- 2.1 General Services.
 - 2.1.1 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.
 - 2.1.2 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. 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.
 - 2.1.3 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.

WHEN THE SCOPE INCLUDES 100% DESIGN, THE FOLLOWING SECTIONS 2.2.1 AND 2.2.2 WILL BE USED:

- 2.2 Phased Services.
 - 2.2.1 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 2.1 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 2.3 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 7.0 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). Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 2.3.

2.2.2 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 2.3.~~

WHEN THE SCOPE INCLUDES 60% DESIGN, THE FOLLOWING SECTIONS 2.2.1 AND 2.2.2 WILL BE USED:

2.2 Phased Services.

2.2.1 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 2.1 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 2.3 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 7.0 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).

2.2.2 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 2.3.

2.2.3 Additional Design Services. The Owner reserves the option to have the Design-Builder provide additional design services after completion of design services pursuant to Section 2.3.2.3 or Section 2.3.2.4.ii., at rates set forth in this agreement. This work may include re-design any time throughout the duration of the project, including during the construction phase.

2.3 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).

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

2.3.1.1 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 7.4.1 hereof; and
- ii. The estimated Cost of the Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2 hereof.; and
- iii. ~~If applicable, any prices established under Section 7.1.3 hereof;~~

2.3.1.2 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;

2.3.1.3 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;

2.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

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

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

2.3.1.8 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);

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

2.3.2 Review and Adjustment to Proposal.

2.3.2.1 *Review of 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.

2.3.2.3 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.

2.3.2.4 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 2.3.2.3 above;

~~ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 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 7.1.1. for the Phase 1 Services. Owner may terminate in accordance with Section 9.4.; or~~

iii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; ~~provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 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 Item 2.3.2.4 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 9.2 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 2.3.2.4 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 2.3.2.4(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 3

Contract Documents

3.1 The Contract Documents are comprised of the following:

3.1.1 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* (2010 Edition) ("General Conditions of Contract");

3.1.2 The Contract Price Amendment referenced in Section 2.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 2.3 herein.

3.1.3 This Agreement, including Exhibits A through X listed below:

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

Exhibit C – Insurance Requirements for Owner and Design-Builder

Exhibit D – CBI Forms

Exhibit E – Schedule for Phase 1 Services

Exhibit F – Fee

Exhibit G – Forms (Commercial Non-Discrimination Certification; E-Verify Certification; Certification Regarding Debarment, Suspension and Other Responsibility Matters; Byrd Anti-Lobbying Certification);

Exhibit H – Sales / County Sales / Use Tax Statement

Exhibit I – Davis-Bacon Instructions for SRF Projects

Exhibit J – American Iron and Steel (AIS) Provisions

Exhibit K – NC Division of Water Infrastructure MBE/WBE (DBE) Compliance Supplement

3.1.4 The General Conditions of Contract with Charlotte Water Supplementary Conditions;

3.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 4

Interpretation and Intent

4.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 2.3 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.

4.2 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 3.1 hereof.

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

4.4 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.

4.5 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 5

Ownership of Work Product

5.1 ~~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 ~~Owner~~ 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 5.2 through 5.5 below.

5.2 ~~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 the Owner’s obligation to provide the indemnity set forth in Section 5.5 herein.

5.3 ~~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 9 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 5.2 above, conditioned on the following:

5.3.1 ~~Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party, and on the Owner’s obligation to provide the indemnity set forth in Section 5.5 herein, and;~~

5.3.2 ~~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 5.2 if Owner resumes the Project through its employees, agents, or third parties.~~

5.4 ~~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 5.2 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 5.3 above.

5.5 ~~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 5, 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.

5.6 Design-Builder's Indemnification for Use of Work Product. If the Design-Builder completes design of the project pursuant to Section 2.3.2.3 or Section 2.3.2.4.ii., or is the sole responsible party to perform all additional design services pursuant to Section 2.2.3, 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, arising out of or resulting from the use of the Work Product, to the fullest extent permitted by applicable law.

5.7 Owner's Indemnification Upon 100% Project Design Completion. Owner has an express understanding that its material 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 materially altered remain the sole responsibility of the Design Builder.

Article 6

Contract Time

6.1 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. A schedule for Phase 1 services is included as Exhibit E. 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.

6.2 Reserved. This article to be completed as part of the GMP.

6.2.1 Reserved. This article to be completed as part of the GMP.

6.2.2 Reserved. This article to be completed as part of the GMP.

6.2.3 Reserved. This article to be completed as part of the GMP.

6.2.4 Reserved. This article to be completed as part of the GMP.

6.3 Reserved. This article to be completed as part of the GMP.

6.4 Reserved. This article to be completed as part of the GMP.

6.5 Reserved. This article to be completed as part of the GMP.

6.6 Reserved. This article to be completed as part of the GMP.

6.7 Reserved. 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: _____ 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.

6.8 Force Majeure: Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:

6.8.1 If such failure or delay:

6.8.1.1 could not have been prevented by reasonable precaution;

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

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

6.8.2 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.

6.8.3 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.

6.8.4 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.

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

Article 7

Contract Price

7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the Not to Exceed sum of _____ (\$_____) for the Phase 1 Services, 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.

7.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 7 ~~6~~ of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in ~~Section 7.2 hereof or in the Contract Price Amendment~~, or equal to the

Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to any GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

~~7.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis:~~

~~7.2 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.~~

~~7.3 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:~~

~~7.3.1 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 _____ percent (_____%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.~~

~~7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:~~

~~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.~~

~~7.4 Reserved. This article to be completed as part of the GMP.~~

~~7.4.1 Reserved. This article to be completed as part of the GMP.~~

~~7.4.2 Reserved. This article to be completed as part of the GMP.~~

~~7.4.2.1 Reserved. This article to be completed as part of the GMP.~~

~~7.4.2.2 Reserved. This article to be completed as part of the GMP.~~

~~7.5 Reserved. This article to be completed as part of the GMP.~~

~~7.5.1 Reserved. This article to be completed as part of the GMP.~~

~~7.5.1.1 Reserved. This article to be completed as part of the GMP.~~

~~7.5.1.2 Reserved. This article to be completed as part of the GMP.~~

~~7.5.1.3 Reserved. This article to be completed as part of the GMP.~~

- 7.5.1.4 Reserved. This article to be completed as part of the GMP.
- 7.5.1.5 Reserved. This article to be completed as part of the GMP.
- 7.5.1.6 Reserved. This article to be completed as part of the GMP.
- 7.5.1.7 Reserved. This article to be completed as part of the GMP.
- 7.5.1.8 Reserved. This article to be completed as part of the GMP.
- 7.5.1.9 Reserved. This article to be completed as part of the GMP.
- 7.5.1.10 Reserved. This article to be completed as part of the GMP.
- 7.5.1.11 Reserved. This article to be completed as part of the GMP.
- 7.5.1.12 Reserved. This article to be completed as part of the GMP.
- 7.5.1.13 Reserved. This article to be completed as part of the GMP.
- 7.5.1.14 Reserved. This article to be completed as part of the GMP.
- 7.5.1.15 Reserved. This article to be completed as part of the GMP.
- 7.5.1.16 Reserved. This article to be completed as part of the GMP.
- 7.5.1.17 Reserved. This article to be completed as part of the GMP.
- 7.5.1.18 Reserved. This article to be completed as part of the GMP.
- 7.5.1.19 Reserved. This article to be completed as part of the GMP.
- 7.5.1.20 Reserved. This article to be completed as part of the GMP.
- 7.5.1.21 Reserved. This article to be completed as part of the GMP.
- 7.5.1.22 Reserved. This article to be completed as part of the GMP.
- 7.5.1.23 Reserved. This article to be completed as part of the GMP.
- 7.5.2 Reserved. This article to be completed as part of the GMP.
- 7.5.2.1 Reserved. This article to be completed as part of the GMP.
- 7.5.2.2 Reserved. This article to be completed as part of the GMP.
- 7.5.2.3 Reserved. This article to be completed as part of the GMP.
- 7.5.2.4 Reserved. This article to be completed as part of the GMP.
- 7.6 Reserved. This article to be completed as part of the GMP.
- 7.6.1 Reserved. This article to be completed as part of the GMP.

- 7.6.2 Reserved. This article to be completed as part of the GMP.
- 7.6.3 Reserved. This article to be completed as part of the GMP.
- 7.6.3.1 Reserved. This article to be completed as part of the GMP.
- 7.6.3.2 Reserved. This article to be completed as part of the GMP.
- 7.7 Reserved. This article to be completed as part of the GMP.
- 7.7.1 Reserved. This article to be completed as part of the GMP.
- 7.7.2 Reserved. This article to be completed as part of the GMP.
- 7.7.3 Reserved. This article to be completed as part of the GMP.
- 7.7.4 Reserved. This article to be completed as part of the GMP.
- 7.7.5 Reserved. This article to be completed as part of the GMP.
- 7.8 Reserved. Performance Incentives.
- 7.8.1 ~~Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.~~

Article 8

Procedure for Payment

- 8.1 ~~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:~~
- 8.2 Contract Price Progress Payments.
- 8.2.1 Design-Builder shall submit to Owner on the _____ (____) 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.
- 8.2.2 Owner shall make payment within ~~ten (10)~~ thirty (30) days after Owner's receipt 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.
- 8.2.3 If Design-Builder's Fee under Section 7.4 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.
- 8.3 Retainage on Progress Payments.
- 8.3.1 For Phase 2 services, Owner will retain five percent (5%) 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~~

~~Subcontractors completing their work early in the Project. Owner may reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

8.3.2 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.

If a warranty reserve has been established pursuant to Section 7.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.23 above.

8.4 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 of the Final Application for Payment, provided that: (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

8.5 ~~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.~~

8.6 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 the 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 the Owner and Design-Builder as part of this Agreement is not subject to audit.

8.7 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 provided as Exhibit H. 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.

8.7.1 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.

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

Article 9

Termination for Convenience

- 9.1 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:
- 9.1.1 All services performed and Work executed prior to the effective date of termination and for proven loss, cost, or expense in connection with the services and Work;
- 9.1.2 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
- 9.1.3 The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.
- 9.1.4 Design-Builder shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.
- 9.1.5 All costs submitted for reimbursement pursuant to Sections 9.1.1 through 9.1.4 must be approved by the Owner.
- 9.2 ~~Reserved. In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following as applicable:~~
- 9.2.1 ~~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 for Phase 1 Services.~~
- 9.2.2 ~~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.~~
- 9.3 ~~Reserved. If Owner terminates this Agreement pursuant to Section 9.1 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 5.3 hereof. 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 5.~~

9.4 If the Design-Builder has proceeded to perform Phase 1 Services pursuant to Section 2.3.2.4.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; provided, however, that Design-Builder may perform additional design work for Owner as described in Exhibit B – Scope of Services.

Article 10

Representatives of the Parties

Reserved.

~~10.1 Owner's Representatives.~~

~~10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner 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.~~

~~10.1.2 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:~~

~~10.2 Design-Builder's Representatives.~~

~~10.2.1 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:~~

~~10.2.2 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:~~

Article 11

Bonds and Insurance

11.1 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.

11.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond: or other performance security for Phase 1 Services if any construction services exceeds \$300,000; otherwise, the following bonds are required at the time of the GMP amendment for Phase 2 Services.

Performance Bond.

Required

Not Required

Payment Bond.

Required Not Required

Other Performance Security.

Required Not Required

Article 12

Other Provisions

12.1 Other provisions, if any, are as follows:

12.1.1 Charlotte Business INclusion. This Project is subject to the requirements of the Charlotte Business INclusion (CBI) program.

The Charlotte City Council adopted the CBI Policy to promote diversity, inclusion, and small business opportunities in the City's contracting and procurement process for Minority-Owned Businesses, Women-Owned Businesses, and Small Business Enterprises (MWSBE) having a significant business presence in the Charlotte Combined Statistical Area (CSA). The CBI Policy is posted at www.charlottebusinessinclusion.com.

The **Charlotte CSA consists of the following 13 counties:** In North Carolina: Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Union, Stanly. In South Carolina: Chester, Lancaster, and York.

The City will negotiate MWSBE Subcontracting Goals for the Project with the selected firm(s):

- MBE Goal: May be satisfied by an entity that qualifies as a Minority-Owned Business Enterprise under N.C. Gen. Stat. § 143-128, and that has been certified as a Historically Underutilized Business by the State of North Carolina with the business having a significant business presence in the Charlotte Combined Statistical Area. Please note, when identifying MBEs for inclusion towards the MBE Goal, only HUB-certified MBEs having a significant business presence and registered with the CBI office in the Charlotte Combined Statistical Area will be counted towards the MBE Goal.
- WBE Goal: May be satisfied by an entity that qualifies as a Women-owned Business Enterprise under N.C. Gen. Stat. § 143-128, and that has been certified as a Historically Underutilized Business by the State of North Carolina with the business having a significant business presence in the Charlotte Combined Statistical Area. Please note, when identifying WBEs for inclusion towards the WBE Goal, only HUB-certified WBEs having a significant business presence and registered with the CBI office in the Charlotte Combined Statistical Area will be counted towards the WBE Goal.
- SBE Goal: May be satisfied by an entity that is certified by the CBI Policy as meeting all of the requirements for SBE certification.
- Aggregate MWSBE Goal (Project Goal): The total work performed by MBEs, WBEs or SBEs in the aggregate for this Project. The City will negotiate a Project Goal for individual projects/contracts with the selected firm(s).

Firms are highly encouraged to consider any and all possibilities for MWSBE participation. A complete list of City certified SBEs and registered MWBEs are available at www.charlottebusinessinclusion.com.

In evaluating the firm's proposal, the City may take into account: (1) the firm's past performance in meeting MBE, WBE and SBE goals; (2) the firm's Participation Plan; and (3) the Participation Plan submitted by other firms in comparison to the firm's Participation Plan.

Note: The Project Goal for the Construction Phase of the project shall be negotiated as part of the GMP efforts.

Forms and instructions for complying with the CBI Program are included in Exhibit D, attached hereto and incorporated herein by reference.

If project has state or federal funds, use the following 12.1.1:

12.1.1 The project is partially funded by a Clean Water State Revolving Fund (CWSRF) loan.

12.1.1.1 Projects funded through the CWSRF program must comply with Davis-Bacon wage requirements. More information is provided in Exhibit I.

12.1.1.2 Projects funded through the CWSRF program must comply with American Iron and Steel provisions. More information is provided in Exhibit J.

12.1.1.3 Projects funded through the CWSRF program must comply with the NC Division of Water Infrastructure MBE/WBE (DBE) program. More information is provided in Exhibit K.

12.1.2 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 City.

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 City regardless of the type of facility and regardless of the manner in which the Design-Builder acquired possession of such documents. The City 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 City 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 City and such changes as the City 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 City 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 City. 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.

- 12.1.3 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.
- 12.1.4 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 Contract. In signing this Contract, Design-Builder further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract 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 Contract.
- 12.1.5 Non-Appropriation of Funds. If City Council does not appropriate the funding needed by the City to make payments under this Contract for a given fiscal year, the City 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 City will promptly notify the Design-Builder of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
- 12.1.6 Commercial Non-Discrimination Ordinance. As a condition of entering into this Contract, the Design-Builder represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Design-Builder shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Design-Builder retaliate against any person or entity for reporting instances of such discrimination. The Design-Builder shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Design-Builder understands and agrees that a 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 City contracts or other sanctions.

As a condition of entering into this Contract, Design-Builder agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection,

treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Design-Builder has used on City contracts in the past five years, including the total dollar amount paid by Design-Builder on each subcontract or supply contract. Design-Builder further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Design-Builder agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Design-Builder to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time.

The Design-Builder understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Design-Builder from participating in City contracts and other sanctions.

12.1.7 City's Web-Based Project Control System (e-Builder). Engineer certifies and agrees to utilize the City's web-based Project Control System (e-Builder) in the execution of its scope of services:

- a. E-Builder is a web-based program management tool that manages program cost, schedule, and documents. Information on e-Builder can be found at www.e-builder.net.
- b. The Engineer shall effectively manage and use e-Builder including maintaining adequate staffing levels and ensuring that personnel attend the mandatory City-provided training sessions.
- c. All parties shall use e-Builder for records retention and management of all project communication and documentation until completion of the Engineer's scope of services.
- d. The Engineer shall use the workflow processes contained within e-Builder to submit and receive approval for all project deliverables.
- e. The Engineer shall continuously monitor and review e-Builder to ensure the Engineer's data is current through completion of the Engineer's scope of services.
- f. Documents, forms, and processes that will be used in e-Builder by the City, City's Representatives and Contractor include but are not limited to: Request for Information (RFI), Supplemental Instructions, Submittals, Drawings and Specifications, Photo Documentations, Change Orders, Change Directives, Change Proposals, Pay Applications, CBI Payment Affidavits, Reports (daily, monthly, etc.), Schedules, Special Inspections, Meeting Minutes, Online document collaborations and Closeout.
- g. If specific documents, forms, and processes are not available in e-Builder, submittal shall be as directed by the City.
- h. Scanned documents shall be searchable PDF format and image files can be in jpeg, tiff and bmp format. All documents shall have clarity of 300 dpi or better.
- i. The City will provide access to e-Builder for active project participants and technical service support at no cost to the Engineer. The City will not furnish any equipment related to accessing e-Builder. E-Builder is web-accessible, and can therefore be accessed via any computer with an Internet connection.

- j. The City will provide training to familiarize team members with e-Builder at no cost to the Engineer. In an effort to protect proprietary information and prohibit unauthorized use or modifications, levels of access security will be assigned by the City based on user roles and responsibilities.
- k. The City will provide e-Builder system administration and end user support, for the duration of the project.
- l. All parties are to maintain a current copy of their data on their own system. The City is not liable for willful or inadvertent acts of any user, theft, or force majeure.
- m. The City shall retain ownership of all data in the system and shall administer all information contained therein. Distribution of any system data shall be made upon request.

12.1.8 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:

Charlotte Water
5100 Brookshire Boulevard
Charlotte, NC 28216
Attn:
Phone:
Email: @charlottenc.gov

City of Charlotte Attorney's Office
600 E. Fourth Street, 15th Floor
Charlotte, NC 28202
Attn: Thomas Powers
Phone: 704-336-5877
Email: tpowers@charlottenc.gov

For the Design-Builder:

Design-Builder
Address
Attn:
Phone:
Email:

12.1.9 Background Checks. The Company agrees that it has conducted or will conduct background checks on all Company personnel that are or will be assigned to perform work under this Contract, whether as part of the Company's standard pre-employment screening practices or otherwise. The Company also shall require its subcontractors (if any) to perform a background check on their personnel that are or will be assigned to perform work under this Contract, whether as part of the standard pre-employment screening practices or otherwise. For each new project undertaken by the Company pursuant to this Contract, then a background check in accordance with this paragraph shall be performed.

Each background check must include:

- a. The person's criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years
- b. A reference check

Each background check must include the following additional investigation:

- a. A motor vehicle records check if the job duties require driving
- b. A sexual offender registry check if the job duties require entering a private household or interacting with children.

The Company must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The Company agrees that if any personnel does not meet the background qualifications, then the person shall not be assigned to perform work under this Contract. The Company also shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason. If there is any question as to whether any personnel meets the background check qualifications, then the Company shall contact the City immediately.

The City may conduct its own backgrounds checks on principals of the Company as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

Article 13

Limitation of Liability

Reserved.

~~13.1 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 _____ percent (____%) of the Contract Price. The parties agree that specific consideration has been given by the 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.

[DESIGN-BUILDER]

**CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE
OFFICE/DEPARTMENT/DIVISION**

BY: _____
(signature)

BY: _____
(signature)

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

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

BY: _____
(signature)

DATE: _____

SAMPLE
CONTRACT

EXHIBIT C

INSURANCE REQUIREMENTS FOR OWNER AND DESIGN-BUILDER

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

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 contract documents. This insurance shall be written for not less than the limits of liability specified below, or required by law.

If any part of the work under the contract is sublet, the contractor 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 contract, the Design Builder shall be responsible for securing other acceptable insurance to provide continuous coverage during the life of this contract.

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 in Amendment No. 1 for Phase 2 Construction Services.*)

Automobile: Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$2,000,000 combined single limit - Bodily injury and property damage combined.

Comprehensive General Liability: Liability coverage as shall protect the Design Builder performing work under this contract from claims of bodily injury or property damage which arise from operations of this contract 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 contract 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 \$2,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. The City of Charlotte and its employees, agents, and representative (if applicable) shall be named as additional insured under the Design Builder's general liability policies.

Workers' Compensation: Workers' Compensation meeting the statutory requirement of the State of North Carolina, and Employer's Liability limits in the amount of \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit, providing coverage for employees and owners.

Professional Errors & Omissions: Insurance with a limit of not less than \$2,000,000 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 contract.

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 in Amendment No. 1 for Phase 2 Construction Services.)*

Builders' Risk: Design Builder shall purchase and maintain, builder's risk insurance in the amount of the initial contract amount 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 contract 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 in Amendment No. 1 for Phase 2 Construction 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 contract documents 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, acceptable insurance is restored. This would be in addition to any legal recourse open to the City under breach of contract.

Owner Requirements

In accordance with Article 5 of the General Conditions of the Contract, Owner shall furnish proof of insurance coverage in the minimum amounts specified below:

The Owner 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 Owner's operation under the contract documents. This insurance shall be written for not less than the limits of liability specified below, or required by law.

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

Automobile: Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$2,000,000 combined single limit - Bodily injury and property damage combined.

Comprehensive General Liability: Liability coverage as shall protect the Owner performing work under this contract from claims of bodily injury or property damage which arise from operations of this contract

whether such operations are performed by the Owner, 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 contract and broad form property damage, explosion, collapse and underground utility damage.

The amounts of such insurance shall not be less than \$2,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. As a self-insured public entity, Owner cannot name the Design Builder as an additional insured.

Workers' Compensation: Workers' Compensation meeting the statutory requirement of the State of North Carolina, and Employer's Liability limits in the amount of \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit, providing coverage for employees and owners.

Failure of the Owner 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, acceptable insurance is restored. This would be in addition to any legal recourse open to the City under breach of contract.

SAMPLE
CONTRACT

COMMERCIAL NON-DISCRIMINATION CERTIFICATION

Project: Project Name

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:

1. 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.
2. 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*.
3. 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.
4. 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.
5. 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.
6. 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 Policy as described in Section 2, Article V of the Charlotte City Code, 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: Project Name

This E-Verify Certification is provided to the City of Charlotte (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: Project Name
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

BYRD ANTI-LOBBYING CERTIFICATION

Project: Project Name

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ (the "Design-Builder") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Design-Builder understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Print Name

Address

Authorized Signature

City / State / Zip

Date

EXHIBIT H

STATE / COUNTY SALES / USE TAX STATEMENT

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 of Charlotte.

Signed: _____

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

Signature of Notary Public _____

of _____ County

State of _____

My Commission Expires: _____



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.
2. Additions and modifications to the DBIA Document No. 535 are shown in the Supplementary Conditions.

Document No. 535

Second Edition, 2010

© Design-Build Institute of America

Washington, DC

TABLE OF CONTENTS

Article	Name	Page
Article 1	General.....	1
Article 2	Design-Builder's Services and Responsibilities.....	2
Article 3	Owner's Services and Responsibilities.....	6
Article 4	Hazardous Conditions and Differing Site Conditions.....	8
Article 5	Insurance and Bonds	9
Article 6	Payment.....	11
Article 7	Indemnification.....	13
Article 8	Time.....	15
Article 9	Changes to the Contract Price and Time	15
Article 10	Contract Adjustments and Disputes	17
Article 11	Stop Work and Termination for Cause	19
Article 12	Electronic Data	21
Article 13	Miscellaneous.....	22

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* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 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*, the Basis of Design Documents are the Owner’s Project Criteria, Design-Builder’s Proposal 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 the 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 the 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 the Design-Builder, the Design Consultant, and key Subcontractors identified by the 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 the Design Consultant, but is retained by the 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 *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.

1.2.8 *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.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 ~~*GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*~~

~~Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.~~

~~1.2.11 GMP 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.~~

1.2.12 *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.

1.2.13 *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.

1.2.14 *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.

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

1.2.16 *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.

1.2.17 *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.

1.2.18 *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.

1.2.19 *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 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 Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; 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).

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.

2.3 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 design 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. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the 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.

2.4.2 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 meetings 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.

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.~~

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, 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. 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.

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. 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 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;~~

~~3.2.1.2 Geotechnical 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~~

~~3.2.1.6 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 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 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 the Owner's Permit List attached as an exhibit to 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.

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 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.

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 are 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 the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.~~

5.2 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 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. The 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. The 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 the 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 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the 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 Subcontractor, 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 herein 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 Right to Stop Work and Interest.

~~6.4.1 If Owner fails to pay timely Design-Builder any 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 confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.~~

6.7.3 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 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 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 bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) 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 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 obligation set forth in Section 7.4.1 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.~~

7.5 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) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for~~

~~whose acts any of them may be liable.~~

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 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 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. Such notice 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 the 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 the 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.~~

10.3 — 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.~~

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 to Design-Builder, 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.~~

~~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 for Cause

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.~~

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 procurement 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 ~~Article 8~~ of the Agreement.

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 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. 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 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) 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) day period. If Owner, within such second seven (7) 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.~~

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.~~

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 place 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, or (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.

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.

Charlotte Water Supplementary Conditions
to the Standard Form of General Conditions Between Owner and Design-Builder,
DBIA Document No.535, Second Edition, 2010
Progressive Design-Build Agreement for Water and Wastewater Projects

ARTICLE 1

1.2.1	<p><i>Replace Section 1.2.1 in its entirety to read as follows:</i></p> <p>1.2.1 <i>Agreement</i> refers to the executed contract between Owner and Design-Builder DBIA Document No. 545, Progressive Design-Build Agreement for Water and Wastewater Projects (2016 Edition).</p>
1.2.2	<p><i>Replace Section 1.2.2 in its entirety to read as follows:</i></p> <p>1.2.2 <i>Basis of Design Documents</i> are as follows: For DBIA Document No. 545, 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 GMP Proposal.</p>
1.2.8	<p><i>Insert the following after “earthquakes,”:</i></p> <p>“public health emergencies,”</p>
1.2.10	<p><i>Replace Section 1.2.10 in its entirety to read as follows:</i></p> <p>1.2.10 <i>GMP Exhibit</i> means that exhibit attached to DBIA Document No. 545, Progressive Design-Build Agreement for Water and Wastewater Projects, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.</p>
1.2.11	<p><i>Replace Section 1.2.11 in its entirety to read as follows:</i></p> <p>1.2.11 <i>GMP Proposal</i> means that proposal developed by Design-Builder in accordance with DBIA Document No. 545, Progressive Design-Build Agreement for Water and Wastewater Projects.</p>

ARTICLE 2

2.5.2	<p><i>Replace paragraph 2.5.2 to read as follows:</i></p> <p>2.5.2 Design-Builder has the right to seek an adjustment in the Contract Price and/or Contract Time 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.</p>
2.6.1	<p><i>Replace paragraph 2.6.1 to read as follows:</i></p> <p>2.6.1 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</p>

	jurisdiction over the Project.
2.6.2	<p><i>Replace paragraph 2.6.2 to read as follows:</i></p> <p>2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility, as identified in Exhibit B, Scope.</p>
2.11	<p><i>Add the following new Section 2.11 immediately after Section 2.10:</i></p> <p>2.11 Furnishing of Services and Information.</p> <p>2.11.1 Unless expressly stated to the contrary in the Contract Documents, upon Owner's request and upon mutual written agreement on related compensation and time adjustments, Design-Builder shall provide the items listed in subsections for the Design-Builder's information and use. The Design-Builder is entitled to rely upon them in performing the Work.</p> <p>2.11.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;</p> <p>2.11.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;</p> <p>2.11.1.3 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;</p> <p>2.11.1.4 A legal description of the Site;</p> <p>2.11.1.5 To the extent available, record drawings of any existing structures at the Site; and</p> <p>2.11.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.</p> <p>2.11.2 Design-Builder is responsible for assisting Owner in 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 responsible for all associated land costs incurred in securing these necessary agreements. With regard to all services performed in relation to the acquisition, appraisal, and legal services of any and all Real Estate Related Services under the Contract Documents, the Design-Builder shall be bound by the terms and conditions to this effect as described in the scope of services.</p>

ARTICLE 3

3.2	<p><i>Replace Section 3.2 in its entirety to read as follows:</i></p> <p>3.2 Furnishing of Services and Information.</p> <p>3.2.1 Owner is obliged to provide assistance in services and information to the Design-</p>
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	<p>Builder where necessary throughout the duration of the project. Items Owner will provide upon request include but are not limited to As-Built Record Drawings, existing facility survey and GIS data, Customer Usage Information, existing Flow Monitoring Reports, existing environmental studies and geotechnical information.</p>
3.4.2	<p>The following is only included when necessary.</p> <p><i>Add the following new Section 3.4.2 immediately after Section 3.4.1:</i></p> <p><i>The Owner will delegate a project manager to serve as the Owner's Representative for the duration of the project.</i></p>
3.7	<p><i>Add the following new Section 3.7 immediately after Section 3.6:</i></p> <p>3.7 Owner Provided Inspection Services.</p> <p>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 construction of or certifying the project consistent with project documents.</p>

ARTICLE 4

4.3	<p>The following is only included for WWTP projects.</p> <p><i>Add the following new Section 4.3 immediately after Section 4.2:</i></p> <p>4.3 Spill Prevention, Response, and Reporting at Treatment Facilities.</p> <p>4.3.1 ISO 14001:2015 Environmental Management Systems Standard. The Environmental Management Division of Charlotte Water holds a corporate certification for the biosolids program, Mallard Creek WRF, Sugar Creek WWTP, and McDowell Creek WWTP and is certified to the ISO 14001:2015 Environmental Management Systems standard. The International Organization for Standardization (ISO) is an international standard-setting body composed of representatives from various national organizations throughout the world, such as ANSI in the United States. The ISO14000 Environmental Management System standards exist to help organizations minimize how their operations can negatively affect the environment while continually improving in all areas. The Design-Builders, subcontractors, and suppliers shall take measures as needed to prevent pollution to help the City conform to the ISO14001:2015 standard.</p> <p>4.3.2 Each wastewater treatment facility has a Spill Prevention, Control, and Countermeasure (SPCC) Plan in accordance with the SPCC regulation (40 CFR 112) and a Stormwater Pollution Prevention Plan in accordance with the Federal Water Pollution Control Act's National Pollutant Discharge Elimination System (NPDES) Program. The Design-Builder shall pay any costs incurred for spill response including clean-up and disposal fees and fines levied against the City 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 City immediately if a spill of any quantity or type occurs on the property.</p>
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4.3.2.1 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 City of all oil and petroleum deliveries, and the City 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:

- i. Give the City notice that delivery is going to be made.
- ii. The Design-Builder shall follow standard operating procedures and good safety practices in accordance with the regulations including but not limited to those defined by the Department of Transportation and to confirm proper connection and disconnection of tank trucks from oil transfer lines during oil deliveries.
- iii. Have delivery personnel sign in at the Administration Building or other City-designated facility immediately upon entering the facility.
- iv. Use the City-designated truck route from the Administration Building or City-designated facility to the delivery point.
- v. 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.
- vi. Remain with the vehicle at all times, and continually monitor the fuel transfer process.
- vii. Use physical barriers systems such as wheel chocks shall be used to reduce the potential for unintentional disconnections.
- viii. Drain the loading/unloading lines to the storage tank and close the drain valves before disconnecting loading/unloading lines.
- ix. Place a drain pan or other appropriate containment device under all connections.
- x. 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.
- xi. Design-Builders shall not conduct filling operations during precipitation events.

4.3.2.2 Stormwater Pollution Prevention:

- i. **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.
- ii. **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.
- iii. **Concrete:** Design-Builder shall not discharge concrete or any residue from rinsing equipment or trucks onto the ground or into the stormwater system. The City 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.
- iv. **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.

	<ul style="list-style-type: none"> v. Chemicals and Fuels: Design-Builders shall provide containment and any other spill prevention necessary for all chemicals and fuels stored or used on-site. vi. 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. vii. 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. <p>4.3.3 The Design-Builder shall visually check any temporary pipelines, pumping equipment, and associated connections conveying wastewaters, sludges, chemicals, or similar potential pollutants on the schedule outlined in the scope of work to detect and stop any leaks and spills. The Design-Builder shall maintain a log(s) of inspections and shall make the log(s) available to the City upon request.</p>
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ARTICLE 5

5.1.3	<p><i>Replace the first sentence of paragraph 5.1.3 to read as follows:</i></p> <p>Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates of insurance and copies of declaration pages 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.</p>
5.2.1	<p><i>Replace Section 5.2.1 in its entirety to read as follows:</i></p> <p>5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located or through participation in an insurance risk pool 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.</p>
5.3	<p><i>Replace Section 5.3 in its entirety with "Reserved".</i></p>

ARTICLE 6

6.4.1	<p><i>Replace Section 6.4.1 in its entirety to read as follows:</i></p> <p>6.4.1 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.</p>
6.7.2.5	<p><i>Replace Section 6.7.2.5 in its entirety to read as follows:</i></p>

	6.7.2.5 Certificates of insurance and copies of declarations pages confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
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ARTICLE 7

7.4.1	<p><i>Replace Section 7.4.1 in its entirety to read as follows:</i></p> <p>7.4 Design-Builder’s General Indemnification.</p> <p>7.4.1 The Design-Builder shall indemnify and hold harmless the Owner and the Owner’s officers, agents and employees from and against any and all damages, liabilities and expenses proximately caused by the Design-Builder’s breach of contract, or negligent, reckless or intentional acts or omissions constituting a tort under applicable statutes or common law or violations of applicable statutes or regulations, unless the damages, liabilities and expenses are proximately caused by or resulting from, in whole or in part, the negligence of the Owner, or the Owner’s officers, agents and employees. Design-Builder may be obligated to pay attorneys’ fees, litigation or court costs actually incurred by the Owner to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedures required of the Owner by law or by contract provided that the fault of the Design-Builder is a proximate cause of such defense costs, litigation expense or court costs. Design-Builder shall purchase insurance, which shall include coverage for the contractual liability described herein. This provision shall survive the expiration or early termination of the Agreement.</p>
7.5	<i>Replace Section 7.5 in its entirety with “Reserved”.</i>

ARTICLE 8

8.2.2	<p><i>Replace paragraph 8.2.2 in its entirety to read as follows:</i></p> <p>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 may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events as set forth in Section 6.8 of the Agreement.</p>
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ARTICLE 10

10.2.2	<p><i>Replace Section 10.2.2 in its entirety to read as follows:</i></p> <p>10.2.2 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).</p>
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10.2.2.1 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.

10.2.2.2 The City and any party contracting with the City 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 City, surety(ies), subcontractor(s), and supplier(s).

10.2.2.3 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.

10.2.2.4 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.

10.2.2.5 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.

10.2.2.6 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.

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

10.2.2.8 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

	<p>investigation and good faith belief by the party requesting the mediation.</p> <p>10.2.2.9 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.</p> <p>10.2.2.10 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.</p> <p>10.2.2.11 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 Mecklenburg County as the mediator shall determine.</p> <p>10.2.2.12 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.</p> <p>10.2.2.13 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.</p>
10.3	<i>Replace Section 10.3 in its entirety with "Reserved".</i>
10.5.1	<p><i>Replace Section 10.5.1 in its entirety to read as follows:</i></p> <p>10.5.1 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</p>
10.5.2	<i>In Section 10.5.2, delete "Article 5" and replace with "Article 6".</i>

ARTICLE 11

11.2.1	<p><i>Replace Section 11.2.1 in its entirety to read as follows:</i></p> <p>11.2.1 Owner, 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:</p> <p>11.2.1.1 If Design-Builder persistently fails to provide a sufficient number of skilled workers.</p> <p>11.2.1.2 If Design-Builder persistently fails to supply the materials required by the Contract Documents.</p> <p>11.2.1.3 If Design-Builder persistently fails to comply with applicable Legal Requirements.</p> <p>11.2.1.4 If Design-Builder persistently fails to timely pay, without cause, Design Consultants or Subcontractors.</p> <p>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.</p> <p>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 law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.</p> <p>11.2.1.7 If Design-Builder continuously and persistently provides Work that does not meet the qualifications and specifications as determined by the Owner.</p> <p>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 Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.</p>
11.2.4	<p><i>In Section 11.2.4, delete "Article 8" and replace with "Article 9".</i></p>
11.3.1.2	<p><i>Replace Section 11.3.1.2 in its entirety to read as follows:</i></p> <p>11.3.1.2 Owner's failure to pay undisputed amounts properly due under Design-Builder's Application for Payment</p>
11.4.1.1	<p><i>Replace Section 11.4.1.1 in its entirety to read as follows:</i></p> <p>11.4.1.1 The Work has been stopped for ninety (90) days or more 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.</p>
11.4.1.2	<p><i>Replace Section 11.4.1.2 in its entirety to read as follows:</i></p>

	<p>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 ninety (90) days or more 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.</p>
11.4.2	<p>Replace Section 11.4.2 in its entirety to read as follows:</p> <p>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 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 thirty (30) day period. If Owner, within such second 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.</p>
11.5	<p><i>Replace Section 11.5 in its entirety with "Reserved".</i></p>

ARTICLE 13

13.1	<p>Replace Section 13.1 in its entirety to read as follows:</p> <p>13.1 Confidential Information.</p> <p>13.1.1 Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:</p> <p>13.1.1.1 Trade secrets. For purposes of this Contract, trade secrets consist of information of the City 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.</p> <p>13.1.1.2 Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."</p> <p>13.1.1.3 Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.</p> <p>13.1.1.4 Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.</p>
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13.1.1.5 Citizen or employee social security numbers collected by the City.

13.1.1.6 Computer security information of the City, 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 City that contains information about a taxpayer's income or receipts.

13.1.1.8 Any attorney / City 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 city-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 City 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 City 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 City 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 City 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 City and the City'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 City 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 City;

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 City 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 City, 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.

SAMPLE
CONTRACT

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FIRST AMENDMENT TO THE AGREEMENT TO PROVIDE
DESIGN-BUILD SERVICES FOR [CONTRACT NAME]

THIS FIRST AMENDMENT TO THE AGREEMENT TO PROVIDE DESIGN-BUILD SERVICES FOR [CONTRACT NAME] (this "First Amendment") is made and entered into this ___ day of ___, 2020, by and between [Design-Builder], a [State] corporation doing business in North Carolina (the "Design-Builder"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

Statement of Background and Intent

- A. The City of Charlotte and the Design-Builder entered into an Agreement for the [Contract Name] dated [effective date] (the "Contract") pursuant to which the Design-Builder agreed to provide Design-Build Services for the City of Charlotte.
- B. The parties amended the Contract on (date) to (description).
- C. The parties now desire to amend the Contract to establish the Guaranteed Maximum Price (GMP) for Phase 2 of the Project and to incorporate certain other changes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree to the following:

AGREEMENT

1. The terms of the Contract are restated by and incorporated into this First Amendment by reference.
2. Defined terms used in this First Amendment shall have the same meaning as are assigned to such terms in the Contract.
3. Article 2 of the Contract ("Design-Builder's Services and Responsibilities") is hereby amended by adding the following new section / as follows:

2.2.3 Additional Design Services. The Owner reserves the option to have the Design-Builder provide additional design services after completion of design services pursuant to Section 2.3.2.3 or Section 2.3.2.4.ii., at rates set forth in this agreement. This work may include re-design any time throughout the duration of the project, including during the construction phase.

4. Article 5 of the Contract ("Ownership of Work Product") is hereby amended as follows:

5.1 Reserved.

5.2 Reserved.

5.3 Reserved.

5.4 Reserved.

5.5 Reserved.

5.6 Design-Builder's Indemnification for Use of Work Product. If the Design-Builder completes design of the project pursuant to Section 2.3.2.3 or Section 2.3.2.4.ii., or is the sole responsible party to perform all additional design services pursuant to Section 2.2.3, 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, arising out of or resulting from the use of the Work Product, to the fullest extent permitted by applicable law.

5.7 Owner's Indemnification Upon 100% Project Design Completion. Owner has an express understanding that its material 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 materially altered remain the sole responsibility of the Design Builder.

5. The following sections of Article 6 of the Contract ("Contract Time") are hereby amended as follows:

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

6.2.2 Reserved. or Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: _____ (interim milestones)

6.2.3 ~~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 1.2.7 of the General Conditions of Contract.

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

6.3 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.

6.4 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 _____() days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner _____dollars (\$) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Design-Builder understands that if Final Completion is not achieved within _____() 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 _____() days of Substantial Completion, Design-Builder shall pay to Owner _____dollars (\$), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

6.5 Reserved.

6.6 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 8.4 hereof an early completion bonus of _____dollars (\$) for each day that Substantial Completion is attained earlier than the Bonus Date.

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

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

6. The following sections of Article 7 of the Contract ("Contract Price") are hereby amended as follows:

7.4 Design-Builder's Fee

7.4.1 Design-Builder's Fee shall be:

_____ Dollars (\$ _____), as adjusted in accordance with Section 7.4.2 below.

or

_____ percent (_____%) of the Cost of the Work, as adjusted in accordance with Section 7.4.2 below.

or

The contract is set as a unit price contract, therefore the Design-Builder's fee is built in. See attached unit price schedule of values. Design-Builder will be paid by units installed.

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

7.4.2.1 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 _____ percent (_____%) of the additional Costs of the Work incurred for that Change Order, ~~plus any other markups set forth at Exhibit _____ hereto.~~ Any portion of the additional Cost of Work completed by a Subcontractor shall allow the Design-Builder to receive a fee of X percent (_____%).

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

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.~~

7.5 Cost of the Work.

7.5.1 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:

Contract#:
Amendment#:
Vendor#:

7.5.1.1 Wages 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.

7.5.1.2 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.

7.5.1.3 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 in Exhibit D 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.

7.5.1.4 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 7.5.1.1 through 7.5.1.3 hereof.

[In lieu of the language in Section 7.5.1.4 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 7.5.1.1 through 7.5.3.3 hereof.

7.5.1.5 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.

7.5.1.6 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.

7.5.1.7 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.

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

Contract#:
Amendment#:
Vendor#:

7.5.1.9 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.

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

7.5.1.11 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, photocopying, and reasonable petty cash expenses.

7.5.1.12 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.

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

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

7.5.1.15 Certain 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.

7.5.1.16 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.

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

7.5.1.18 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.

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

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

7.5.1.21 Accounting and data processing costs related to the Work.

7.5.1.22 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 7.5.1.23 to address the payment of warranty work:]

7.5.1.23 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.

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

7.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.

7.5.2.2 Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.

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

7.5.2.4 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.

7.6 The Guaranteed Maximum Price.

7.6.1 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 7.3 herein.~~

7.6.2 The GMP includes a Contingency in the amount of _____ Dollars (\$_____) 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 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 ~~provide Owner notice of all anticipated charges against the Contingency, and~~ only charge against the Contingency with Owner's approval, which shall not be unreasonably withheld. Design-Builder 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 Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the 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 Contingency.

The GMP includes an Owner Contingency in the amount of _____ Dollars (\$_____) which is available for the Owner's exclusive use. Funds not expended from the Owner Contingency and the Design-Builder's Contingency will return to the Owner and the end of the job and shall not be considered in Savings.

7.6.3 Savings.

7.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 7.1.3 hereof) is less than the GMP, 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:)

_____ percent (_____%) to Design-Builder and _____ 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.

7.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 8.4 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.

7.7 Allowance Items and Allowance Values.

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

7.7.2 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.

7.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced 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.

7.7.4 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.

~~7.7.5 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 7.7.4. 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. 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 7.7.4. The amount of the Change Order or funds distributed from the Owner's Contingency shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

7. Article 9 of the Contract ("Termination for Convenience") is hereby amended:

9.1 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:

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

9.1.2 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

9.1.3 The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.

Contract#:
Amendment#:
Vendor#:

9.1.4 Design-Builder shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

9.1.5 All costs submitted for reimbursement pursuant to Sections 9.1.1 through 9.1.4 must be approved by the Owner.

9.2 Reserved.

9.3 Reserved.

9.4 If the Design-Builder has proceeded to perform Phase 1 Services pursuant to Section 2.3.2.4.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; provided, however, that Design-Builder may perform additional design work for Owner as described in Exhibit B – Scope of Services.

8. The third paragraph of Exhibit C of the Contract (“Insurance Requirements for Owner and Design-Builder”) is hereby amended:

If any part of the work under the contract is sublet, the contractor 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.

9. Pursuant to Article 11 of the Contract (“Bonds and Insurance”), performance and payment bonds are attached as Exhibit A of this Amendment.
10. Pursuant to Exhibit C of the Contract (“Insurance Requirements for Owner and Design-Builder”), a Certificate of Insurance is attached as Exhibit B of the Amendment demonstrating proof of insurance coverage for all requirements, including coverage identified as necessary for Phase 2 Construction Services.
11. Pursuant to Section 12.1.1 of the Contract (“Charlotte Business INCLUSION”), the Design-Builder’s Participation Plan is attached as Exhibit C of this Amendment.
12. Except to the extent specifically provided above, this amendment shall not be interpreted or construed as waiving any rights, obligations, remedies, or claims the parties may otherwise have under the Contract.
13. In all other respects and except as modified herein, the terms of the Contract shall remain in force and effect.

[Signature Page Follows]

Contract#:
Amendment#:
Vendor#:

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

[DESIGN-BUILDER]

**CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE
OFFICE/DEPARTMENT/DIVISION**

BY: _____
(signature)

BY: _____
(signature)

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

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

BY: _____
(signature)

DATE: _____

SAMPLE CONTRACT