CITY OF DURHAM
General Services Department
Project Management Division
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Request for Qualifications

Issued: ***December 18, 2015***

Fire Station 17 (New)

Pursuant to N.C. Statute Sec. 143-128.1(A), the City of Durham is soliciting proposals from qualified design-build teams interested in providing professional design and construction services for the new Fire Station 17 facility for the Durham Fire Department. This RFQ provides complete information on the services being sought, the submittal requirements and timeline.

The complete Request for Qualifications (RFQ) may be viewed at http://www.durhamnc.gov/departments/purchasing/ and copies may be downloaded directly from this site which is the only official source for this document. Acquiring from a different source could mean that this document has been superseded by a later version. Only those requesting this document from the advertised source will be included on a mailing list for updates. The City is not responsible for any reader's failure to heed this notice.

All Design-Build Teams shall register with the General Services Department by December 28, 2015. Responses to this RFQ from unregistered Design-Build Teams will not be considered. To register, email the Team's name and address as well as a prime contact name with his/her phone number, e-mail address and fax number to the City contact listed below. Questions, requests for information and responses to this RFQ shall be addressed and delivered to:

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General Services Department, Project Management Division
2011 Fay Street, Durham, NC 27704
ph. (919) 560-4197, ext. 21255 fax (919) 560-4970 *e-mail: dave.delcambre@durhamnc.gov*

Sealed proposals must be received by 12:00PM on December 31, 2015
Late Qualifications, amendments and/or responses received after the time and date listed above shall not be considered for evaluation and will be returned to the Respondent unopened**.**

The City of Durham reserves the right to reject any and all submittals. This RFQ does not obligate the City to pay any cost incurred by respondents in the preparation and submission of a response nor does it obligate the City to accept or contract for any expressed or implied services.

The selected design-build team will be required to adhere to Durham's Comprehensive Plan standards which encourage innovative construction practices that perform above minimum energy code standards and promote sustainable, high performance design and building measures including energy and water efficiency and conservation features, minimization of construction waste and the use of renewable, recycled or reused building materials. The goal of this plan is to support the responsible use and protection of Durham's green infrastructure including environmentally responsible building practices in compliance with LEED (Leadership in Energy and Environmental Design) and/or the Triangle J Council of Governments (TJCOG) High Performance Guidelines.

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SECTION ONE-
DEFINITIONS

1.01 Definitions of Terms in RFQ

Unless the context suggests otherwise, the terms "Firm/Team", "Contractor", "Proposer", "Bidder", "Submitter", "Consultant", or "Vendor" as used in this RFQ (whether capitalized or not) shall refer to the same legal entity that submits qualifications and is responsible for responding to this RFQ.

Whenever the term "City" is used, it means the City of Durham, North Carolina.

Similarly, unless the context suggests otherwise, the terms "Bid", "Qualification", or "Bid/Qualification" shall refer to the formal response given to this RFQ by the submitting entity incorporating all required elements of this RFQ necessary for the City to determine whether the submitting entity is a responsible, responsive Firm/Team.

Whenever the term "RFQ," is used, the reference is to this Request for Qualifications or portions thereof, together with any exhibits, attachments, or addenda it may contain.

1.01.1. Whenever the terms "shall," "will," "must," or "is required" are used in the RFQ, the referenced task is a mandatory requirement of this RFQ. Failure to meet any mandatory requirement will be cause for rejection of a submittal.

1.01.2 Whenever the terms "can," "may," or "should" are used in the RFQ, the referenced specification is discretionary. Therefore, though the failure to provide any items so termed will not be cause for rejection, the Selection Committee may consider such failure in evaluating the quality of the submittal.

1.01.3 Whenever the terms "apparent successful" or "top-ranked" or "highest ranking" firm/company or offerer are used in this document, the reference is to the firm that the Selection Committee ultimately judges to have submitted the case best satisfying the needs of the Owner in accordance with the RFQ. The selection of an apparent successful firm/company does not necessarily mean the Selection Committee accepts all aspects of the firm's submittal or proposal.

1.01.4 Whenever the term "submittal" is used in the RFQ, the reference is to the response offered by a firm, person or corporation in accordance with the RFQ. The submittal responds only to the RFQ.

1.01.5 Whenever the term "Selection Committee" or "Review Committee" is used in the RFQ, the reference is to the Owner's representatives responsible for administering and conducting the evaluation and selection process of the RFQ.

1.01.6 "Design-Build" refers to the construction project delivery method in which, among other things, the Owner holds a single contract with a business entity that has responsibility both to design and to construct a project, and that holds the trade contracts.

1.01.7 "Lead Design-Builder" refers to the design-build team member that will contract with the Owner for all work and holds all responsibility of project success, performance, and completion.

1.01.8 "Design Professional" (an inclusive term for all licensed building professionals), "Architect of Record," an/or "Engineer of Record" all refer to the project's architect(s) and/or engineer(s), whose responsibilities generally include programming, design, code compliance, and detailing of the facility. Under the Design-Build delivery methodology, the Design Professional is an integral part of the

Design-Builder entity under single contract with the Owner. These entities also operate under legal definitions of the State of North Carolina with statutory liability and responsibility.

1.01.9 "Building Commissioning" refers to a formal and systematic process of documentation, adjustment, testing, verification, and training, focused on quality assurance and performed specifically to ensure that the finished facility operates in accordance with the Owner's documented project requirements and the construction documents.

1.01.10 "Commissioning Provider" refers to the entity or person providing building commissioning services for a project.

1.01.11 "Owner's Criteria" is a written document that details the specific and functional requirements of a project, sustainable objectives and the expectations of how the project will be used and operated.

1.01.12 "Qualifications Submittal" and "Initial Written Submittal" both refer to a firm's response to the RFQ.

1.01.13 "Qualifications-Based Selection" and "QBS" both refer to a procurement process for the selection of professional construction services for public projects. It is a competitive contract procurement process whereby consulting firms submit qualifications to a procuring entity (Owner) who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and price.

1.01.14 "Firm" shall be interpreted as referencing the design entity, the construction entity, or the combined (e.g., joint venture) entity, as is reasonable.

1.01.15 "Fixed Fee" shall be proposed by the Design Builder and shall be defined as a specific dollar amount (stated as a lump sum) and agreed upon by all parties at the time of Contract Negotiation. This fee shall not be a percentage of the cost of the work.

End of Section One

SECTION TWO-
BACKGROUND INFORMATION

2.01 Project Background, Goals and Objectives

In 2012, Pulte Home Corporation (Pulte), the developer of Del Webb Carolina Arbors- a 450 acre residential development located on the south side of Leesville Road, east of Doc Nichols Road and north and west of Andrews Chapel Road- submitted a property for a new fire station as part of the zoning and annexation approved by Durham's City Council in June of that year. Currently the area is not served for either initial or fully effective Fire Department response force within established City of Durham response standards. The General Services Department (GSD) and the Fire Department worked with Pulte to identify and evaluate sites in the area that fulfilled the criteria for a new fire station including a proximity that provides adequate fire district response times and an achievable site configuration that can accommodate Fire Department operational requirements.

An acceptable site for the new Fire Station 17 was identified at 5417 Leesville Road (3.66 acres) with the additional nearby property at 5650 Leesville Road (.384 acres) also included in order to satisfy four acre area minimum site donation requirements. This site also provides access to the gravity sewer Pulte will construct within its Dell Webb community which is anticipated to be in place in June, 2016. The City already has a construction document set of drawings prepared by Horvath Associates for this sewer connection. As part of the design process, a minor special use permit will be required since the property is currently zoned residential, is located in the County and will require annexation. Currently there are no existing sewer services onsite and the new fire station construction will require a sewer extension/ connection to the subject site which may also require land easements.

With the design and construction of Fire Station 17 the City has the following goals:

1. Utilize a prototype design to provide the Fire Department with a new facility that incorporates the necessary program elements adequate to prepare, operate, house and maintain a high quality workforce and adequate response times for the fire district.
2. Complete the project in a timely fashion without undue delays and within the City's funding resources available for the project
3. Incorporate high performance, energy efficient HVAC, plumbing, electrical, exhaust, mechanical, security and fire alarm systems and controls that will allow all staff to work in a safe, comfortable, operational facility.
4. Design a facility that takes into consideration energy efficiency / conservation, energy management, energy use monitoring and life cycle cost savings while incorporating environmentally responsible building practices in compliance with the Durham's Comprehensive Plan standards. This project will be expected to be able to achieve a LEED Silver rating as outlined by the U.S. Green Building Council's rating system.
5. Design and construct a facility that responds to the City's maintenance resources and long term maintenance funding by minimizing operating and maintenance cost, maximizing energy efficiency and utilizing efficient ground maintenance.

The City of Durham intends to utilize best commercial practices to accomplish the goals of this project, expects the Design-Builder to proactively address risks and challenges in the process and participate in improvement activities to achieve project success. The City also expects to work with the Design-Builder to devise and implement appropriate processes for this project that will maximize efficiency, overall quality, cost savings and efficiencies.

End of Section Two

SECTION THREE-
SCOPE OF WORK

3.01 Purpose of the RFQ and Lead Design-Builder Responsibilities

The Project Management Division of the City of Durham's General Services Department is soliciting Qualifications for Design-Build project delivery services for the new Fire Station 17. This facility will provide proper fire department response times in support of the rapid growth of residential development near the Leesville Road and Doc Nichols Road intersection in southeast Durham.

This facility will utilize a prototype building design with a program comprised of an approximately 8,900+/- square foot, single story, 3-bay building with apartment accommodations, a weight room, offices, toilet rooms and showers, dining room and kitchen, covered portico/patio and other support facilities. Construction on the new facility is slated to begin in the spring of 2016.

The lead Design-Builder will be expected to provide concurrent design and construction turnkey activities for this project resulting in a finished, fully usable facility that satisfies all project requirements and contract terms. The Design-Builder, as the sole responsible source for total project compliance and construction related performance (including architectural programming, design, and construction services) will hold all design professionals, testing services (with the exception of Special Inspections by Owner), trade contractors and trade supplier contracts.

3.02 Location of the Project

The location of the work is: 5417 Leesville Road (at the northwest corner of the intersection with Doc Nichols Road) in northeast Durham.

NOTE: Throughout the duration of the project, the City **WILL NOT** provide workspace for the Firm/ Team. The selected Design-Build Team is responsible for/ must provide its own workspace.

3.03 Scope of Work

The following is a preliminary scope of work that may be modified during contract negotiations with the selected Design-Build Team.

Site Inventory and Evaluation of Owner's Criteria Confirmation

1. Site investigations, including survey, subsurface utility investigations, geotechnical investigations, environmental engineering, to verify existing conditions if necessary.
2. Preliminary evaluation of proposed site use, material selection, building systems and equipment and provide recommendations on constructability, time, labor and scheduling factors related to project cost.
3. Prepare written report summarizing Owner's Criteria.
4. Conduct a Sustainability Workshop and prepare Sustainability Plan targeting LEED goals.

Schematic / Preliminary Design (SD)

1. Prepare site, architectural, structural, mechanical, plumbing and electrical schematic design plans based on Criteria document and prototype information (provided by Owner in AutoCAD digital format) for City Staff consideration.
2. Confirm sustainability / LEED goals for the project and continue to develop Sustainability Plan.
3. SD Phase plans and Preliminary Design report will minimally include:
   a. <u>Site Development</u> and Design criteria including site access, easements, circulation and vehicular access, setback requirements, area of safe refuge, parking areas, general landscape concept, tree protection measures, lighting areas, utility routing and connections and storm water measure locations.
   b. <u>Building Design</u> information including: reconfirming building prototype program and design intent, space requirements and planning criteria, preliminary selection of building systems and materials, utility load review, code compliance, security plan expectations, building

system integration with storm water plans and outline specification to integrate systems, products and procedures for architectural, civil and landscape.

4. Work in digital format: AutoCAD or Building Information Modeling (BIM) software.
5. Develop preliminary estimate of construction cost setting forth in detail quantities of materials, labor, profit, overhead, insurance etc. for the project including all site work.
6. Attend owner and user meetings to coordinate and resolve value engineering, constructability, construction phasing and scheduling issues in the preliminary design.
7. Prepare Preliminary Design Report (PDR) confirming design criteria, agreed upon program elements, alternative schemes, recommended scheme with construction phasing options and cost model.
8. Develop Design-Builder's Proposal detailing contract sum, estimated trade costs, proposed date of substantial completion and list of key Design-Build personnel and suppliers.
9. Conduct regular, biweekly, design meetings.
10. Conduct two community meetings to solicit community input (if required.)
11. Update the design schedule.
12. Present to required departments/agencies for review; Responsible for all State, County, and City permit applications and approvals.

Design Development (DD)

1. Based on the approved SD plans, satisfactorily resolve all review comments from prior design phases and further refine the design to include the following revised and additional information:
   a. Site Design: demolition and clearing plans, grading and drainage plans, sedimentation and erosion control plans, layout and staking plans, elevations and sections, construction details, lighting and signage, planting plans and details.
   b. Building Design: review and confirm building plan configuration and elevation elements including exterior building skin materials and colors, foundation, roof and structural systems, building fenestration and openings, overall dimensions, materials testing requirements, review MEP design including systems, equipment and calculations, prepare energy and performance modeling, review and coordinate systems integration to include all utilities and controls, assess and coordinate any LEED certification items and submittals.
2. Expand outline specification to Design Development level and integrate systems, controls, products and procedures for architectural, civil and landscape
3. Documents produced in digital format: AutoCAD or Building Information Modeling (BIM) software.
4. Conduct regular, biweekly, design meetings.
5. Conduct one community meeting to solicit community input.
6. Review and confirm total original budget from Schematic Design phase review. Review any proposed V-E items, final strategy and reconcile variances.
7. Review and confirm sustainability goals and prepare life cycle cost analysis.
8. Review, update and confirm project schedule.
9. Attend owner and user meetings to coordinate and resolve value engineering, constructability, construction phasing and scheduling issues in the preliminary design.

Permitting, Reviews and Approvals

1. Review and / or present design concepts to the City of Durham Planning Department and any other regulatory agencies whose approval is necessary for the development of the site.
2. Submit plans and applications to regulatory agencies
3. Secure approvals from all other local and state agencies as required for the site development.
4. Coordinate the construction or relocation of privately owned utilities if necessary.
5. Attend meetings as necessary for all approvals. Provide responses and modifications to regulatory comments.

Construction Documents (CD)

1. Based on the approved DD plans, satisfactorily resolve all review comments from prior design phases and prepare and finalize all construction drawings and specifications to minimally

include: building systems, site utilities and components that will form the basis for the project's Construction Documents sufficiently complete to support the prepared budget, coordinate LEED submittals, obtain necessary permits and construct the project.

2. Documents produced in digital format: AutoCAD or Building Information Modeling (BIM) software.
3. Prepare a construction documents level cost estimate and updated project schedule; reconcile cost estimate with construction estimate.
4. Incorporate bid alternates as necessitated by the project budget.
5. Conduct regular, monthly, design meetings.
6. Conduct a final community meeting to present final design.

Construction Administration

1. Provide construction administration and observation associated with the site improvements including a preconstruction conference, weekly site observation and meetings for processing pay requests.
2. Provide interpretations of prepared drawings and specifications, shop drawing review and approval as well as preparation of change orders and construction change directives.

Construction

1. Site work to include but not be limited to:
   a. Clearing and rough grading with excess dirt and material removed from the site. Tree protection and erosion control measures to be immediately put into place.
   b. Site utilities including fire line and domestic water, sewer, natural gas and electrical service and site lighting.
   c. Concrete paving, walkways, utilities, landscaping and storm water retention system.
   d. Flag pole installation
2. Building construction to include but not be limited to:
   a. Concrete slab on grade foundations with continuous spread reinforced concrete footings and thickened concrete floor slabs at apparatus bay areas.
   b. Exterior bearing walls consisting of reinforced and grouted CMU walls and metal stud framing with brick veneer.
   c. Roof structure consisting of cold formed steel roof trusses, corrugated metal deck and standing seam metal roof with matching fascia, rakes gutters and downspouts.
   d. Exterior building enclosure including insulated exterior wall cavities with appropriate thermal barriers, exterior window systems, hollow metal doors and upward acting sectional doors.
   e. Interior finishes including gypsum wall board on metal stud framed partitions, floor and ceiling finishes, interior doors, casework, painting, wall protection and window coverings.
   f. Toilet and bath fixtures and accessories.
   g. Specialty equipment including lockers and marker boards.
   h. Interior and exterior signage.
   i. Mechanical and electrical systems and controls.

Post Construction Phase/Deliverables

1. Prepare as-built documents based on information received from the contractor in AutoCAD or BIM format or in such other format as the owner requires.
2. Prepare a Facility Maintenance Plan in a format selected by Owner.
3. Assist in project closeout, establishment of warranties and guarantees and LEED certification.
4. Present to required departments/agencies for review; Responsible for all State, County, and City permit applications and approvals.

3.04 Project Budget

Department of General Services Division of Project Management estimates an approximate Construction Budget of $3 million dollars for completion of this project including all costs and fees. Total costs include construction related expenses; architectural programming, design and construction related

services; testing services; public jurisdiction fees and charges; permits; and other building related professional service fees necessary to fully complete the project.

3.05 Anticipated Schedule

The City reserves the right to make adjustments to this schedule as necessary.

Preliminary Project Schedule:	**Date**	**Time**
Issue/Advertise RFQ in official advertising publications	December 18, 2015	
Design-Builder Team Registration due	December 28, 2015	5:00 p.m.
Deadline for written questions and clarifications on RFQ	December 22, 2015	5:00 p.m.
Deadline for submission of Statement of Qualifications	December 31, 2015	12:00 p.m.
Owner completes qualification evaluation to establish a shortlist of firms remaining. Owner notifies shortlisted firms and schedules interviews (if required.)	January 8, 2015	
Complete interviews of short-listed firms	January 15, 2016	
Notify selected Design-Build firm, begin contract negotiations	January 19, 2016	
Complete contract negotiations with selected firm	February, 2016	
City Council award of contract	February, 2016	
Notice to Proceed	March, 2016	
Project Completion	September, 2017	

3.06 Pre-Construction Project Planning

The Design-Builder, as a part of its design and its preconstruction services, will assist with developing a strategy for the best approach for the successful completion of the project including guidance and assistance in the preparation of a schedule and a reliable, preliminary cost estimate along with evaluations of any value engineering measures. At an appropriate point during the project and prior to contracting, the Owner will ask the Design-Builder to commit to a Lump Sum price for all its design and construction services.

3.07 Project Delivery and Objectives

At all times and project stages the Design-Builder shall act in the best interests of the Owner and use their best efforts to deliver the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints and budget. The Design-Builder shall develop a contractually obligated overall project schedule and will be responsible for methods of construction, safety, scheduling and coordination of all construction work in addition to miscellaneous contracts required for completion of the project within its predetermined budget limits and schedule.

The Owner expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. **A spirit of cooperation, collaboration and a commitment among professional design and construction services providers to work in the best interests of the project is of utmost importance.**

End of Section Three

SECTION FOUR-
DESIGN-BUILDER EVALUATION AND SELECTION CRITERIA

4.01 Design-Build Team Experience Requirements and Capabilities

Responders should identify their Team's experience with public or privately bid emergency response design-build projects and specifically describe those projects that best characterize the proposers' capabilities including work quality and cost control measures. These projects must have included the completion of construction drawings, technical specifications and construction estimates that led to a complete constructed project currently in operation. Completed public sector projects and experience with the public bidding process is preferred.

At a minimum, successful submittals shall demonstrate experience and technical competence with the following requirements:

1. Responsively and successfully designing to a user compliant program employing a prototype basis of design.
2. Demonstrated history of successful collaboration constructing complex facilities utilizing a Design-build methodology.
3. Obtaining permits through the City of Durham's permitting processes and/or Inspections/Building Permit Department.
4. Incorporating environmentally responsible building practices and administering LEED certification processes and
5. Effectively providing contract and construction administration services utilizing effective team communication and working methods.

   See the Qualifications Submittal Checklist section of this RFQ for additional information which should be included.

4.02 Design-Build Team Minimum Qualifications

Firms must meet the criteria in the bullet points immediately below. Firms that do not meet these criteria are automatically disqualified.

1. Firm's "Designer(s) of Record" MUST have a current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work. **A copy of the license(s) is to be included in the appendix**.
2. Firm's "Builder" MUST have a current North Carolina Contractor's license with an unlimited building classification. **A copy of the license is to be included in the appendix**.
3. The City's Risk Management Division prefers a safety Experience Modification Rate of 1.0 or less over the last three years. A builder with an EMR greater than 1.0 MUST provide a written explanation of their current safety program and safety training initiatives directed toward minimizing future work related injuries.
4. Lead Design-Build firm MUST have bonding capacity to provide a Labor and Material Payment and Performance bonds with coverage each equal to the total cost of the project.
5. Lead Design-Build firm MUST be able to get a Builder's Risk Insurance Policy for this project with coverage equal to the total cost of the project.
6. Lead Design-Build firm MUST agree to keep and maintain insurance for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below. The Contractor shall furnish the City with certificates of insurance for each type of insurance described herein. The Owner reserves the right to negotiate different limits and coverage in the final contract.)

Commercial General Liability:	$1,000,000 per occurrence
Commercial Auto Liability:	$1,000,000 combined single limit
Excess (Umbrella) Liability:	$1,000,000
Workers' Compensation:	Statutory
Employer's Liability:	$1,000,000 each accident/total disease/employee disease

Professional Liability (Errors & Omissions) coverage for Architect of Record and Engineer(s) of Record shall provide coverage not less than $1 million per claim. (The Owner reserves the right to negotiate different limits and coverage in the final contract.)

All insurance companies must be authorized to do business in North Carolina with a Best rating A-VIII or higher.

NOTE: In order to be deemed eligible for evaluation, the submitting lead Design-Build firm must include the Declaration Statement (signed) included in this RFQ attesting to the above requirements and coverages in its submittal.

4.03 Statement of Qualifications (SOQ) Evaluation Criteria and Scoring (*100 Total Points*)

Submitting Design-Build Teams' responses to this RFQ will be evaluated and ranked by an RFQ Evaluation Team comprised of City of Durham Employees appointed to assess submitted qualifications. Each submitter will be evaluated and short-listed based on their SOQ score (100 points maximum) as determined through the qualification review process and criteria noted in this section.

Design-Build Team Experience and Qualifications - ***30 Points***

Points for this criterion will be awarded based on an evaluation of the qualifications and experience of the proposed lead Design-Builder and Design-Builder's General Contractor/Builder (if a different entity.) Evaluation criteria will focus on the submittals' clear identification of each proposed Firm/Company, the expertise each will bring to the Design-Build process, their track record with 'on-time and on budget' projects and achieving acceptable levels of quality, any current, pending or past project legal matters or litigation and submitting Firm/Company safety records and professional reputation credentials.

Proposed Design & Engineering Professionals' Experience and Qualifications - ***25 Points***

Evaluation points for this criterion will be awarded based on the qualifications, experience and demonstrated availability of the proposed Project Personnel. Responses should have identified each key individual, their experience with the overall Design-Build process (including specific experience with the team's lead General Contractor) as well as experience with similar projects. Also of importance are individuals' litigation and/or arbitration records and the design/engineering professionals'/firms' reputation, references and referrals. Submittals should also have included a listing of other firms proposed Personnel have worked for along with specific project phases, tasks and activities they are expected to contribute to this project.

Project Understanding and Approach - ***20 Points***

This criterion will award points for the Firm/Team's understanding of the goals and objectives for the project and their proposed methodology for meeting those goals and objectives. Firm/Teams must have provided a comprehensive narrative statement illustrating their clear and concise understanding of the requirements of the project, potential issues (and proposed solutions) and a preliminary overall project schedule.

The Team should also have clearly addressed their approach to dealing with key tasks, activities and issues (including the permitting process) required to complete each project phase including deliverables, proposed construction schedule and project coordination issues.

Statement of WHY the Design-Build Team should be selected- ***10 points***

Points for this criterion will be awarded based on an evaluation of the Design-Builder's statement indicating why they should be selected, which should illustrate specific professional capacities or

unique qualifications relating to this project that differentiates the Design-Builder from other qualified submitters.

Small Disadvantaged Business Enterprise (SDBE) Participation- *5 points*

Evaluation of Design-Build team's proposed participation in Small Disadvantaged Business Enterprise program and strategy to achieve the City's SDBE goals for design and construction.

Deliverable Quality, Project Schedule and Safety Controls - *5 Points*

Points for this criterion will be awarded based on the Firm/Team's proposed approach to project controls including milestone scheduling, quality control and management for deliverables and the design and construction processes, and submitted cost budgets and safety plans.

SOQ Quality and Responsiveness – *5 Points*

Points for this criterion will be awarded based on the extent to which the RFQ instructions were followed and qualities including accuracy, responsiveness, organization, clarity and completeness of the submitted Statement of Qualifications. Respondents are encouraged to prepare high quality documents that make it clear to the Evaluation Team what value their Firm/Team/Products have to offer the City.

4.04 Clarifying Qualification During Evaluation

During the evaluation process, the City has the right to require any clarification it needs in order to understand the Firm/Team's view and approach to the project and scope of the work. Any clarifications to the Qualification made before executing the contract will become part of the final Firm/Team contract.

4.05 Short List Ranking

After evaluating the responses to this RFQ, the City will rank the three most highly qualified candidates for ranking and these Short-Listed Teams may be asked to interview to help determine final ranking. If the City determines that fewer than three firms are qualified, it will re-advertise the RFQ pursuant to Section 143-128.1A(d) of the North Carolina General Statutes.

4.05 Interviews of Short-listed Firms/Teams

Prior to ranking the short-listed Firms/Teams for final selection, the City may elect to interview those three Firms/Teams. The purpose of this interview will be to meet the proposed Project team (if applicable), become familiar with key personnel and/or with the selection strategy proposed by the submitter and to understand the Firm/Team's project approach and ability to meet stated objectives for the project. Short Listed Firms/Teams should be prepared to discuss with specificity their capacity to conduct this work in compliance with the project timeframe, budget and good-faith obligations. The City will notify each short-listed firm to schedule individual times for the interviews.

4.05 Design-Build Firm/Team Final Selection

After making final Team selection and taking into consideration quality, performance and the time specified in the Qualifications for performance of the contract [G.S. 143-129 (b)] the City will begin contract negotiations with the selected responsible, responsive Firm/Team. If successful, the Firm/Team and City will enter into a professional services contract for the work.

All respondents are considered fully informed as to intentions of City regarding the timeframe to prepare and complete contract negotiations. Respondents should be prepared to provide a detailed, written Proposal to include scope of work, staffing plans, action plan, CPM Schedule and fee proposal to GSD during negotiations.

The City may withdraw this RFQ, reject qualifications or any portion thereof at any time prior to an award, and is not required to furnish a statement of the reason why a particular qualification was not deemed to be the most advantageous to the City.

4.06 E-Verify Compliance

The design-build contract will require that the design-build team and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS) consistent with state law requirements for municipal contracts.

4.07 Exceptions

It is the City's intention to use a similar contract to the one attached in this RFQ's Appendix. Any Firm/Team that objects to any element of the contract should state those objections in the submittal.

End of Section Four

SECTION FIVE
QUALIFICATIONS SUBMITTAL REQUIREMENTS AND FORMAT

5.01 Physical Submittal: Department Contact, Deadline for Receipt of Qualifications, Format

Submitters must submit seven ***(7)*** total copies of their written Qualification in a sealed package (including one unbound original suitable for photocopying and one in PDF digital format) to the General Services Department Contact by the submission deadline noted in this RFQ. The name and address of the submitter should appear on the outside of the submittals and the package should include the RFQ title and reference the project; i.e. "*RFQ for Design-Build Services for Fire Station 17."*

5.01.1 Each submittal copy shall be identical in content. Submitters shall follow in their responses the checklist outlined in this RFQ. Responses should be concise, clear, and relevant. Submitter's cost incurred in responding to this RFQ is the submitter's alone and the Owner does not accept liability for any such costs. The Owner will not and shall not be required to return any item submitted.

5.01.2 In order for the City to evaluate Qualifications fairly and completely, Firm/Teams should concisely follow the format set out herein and provide all of the information requested:

a. SOQ's shall be bound, numbered consecutively, double-sided, on 8-1/2" x 11" sheets with maximum of 30 pages {not including the coversheet, back cover, cover letter, Table of Contents, Resumes and other City required attachments such as SBDE Forms, Form of Contract Notations/Exceptions, Insurance Certificates, Privilege License(s), Non-Collusion Form, Corporate Resolution Form and authorized signatures.}
b. Up to a maximum of two (2) sheets may be 11" x 17" for schedules or other information necessary to depict the proposed Project Approach/Action Plan.

5.02 Statement of Qualifications Provisions

The Owner intends to limit the cost that submitters incur to respond to this solicitation, therefore, submitters are encouraged to be brief and succinct. Thick volumes of background and general marketing material are not desired. Instead, submitters should highlight their responsiveness to the evaluation criteria. If multiple firms are proposed as one team, each component firm should describe its own relevant qualifications within the same submittal.

Qualifications must confirm that the Firm/Team will comply with all of the provisions in this RFQ, and if applicable, provide notice that the Firm/Team qualifies as a City of Durham certified business. **Qualifications must be signed by a company officer empowered to bind the company.** A Firm/Team's failure to include these items in their Qualifications may cause their Qualification to be determined to be non-responsive and the Qualification may be rejected.

5.03 Minimum Number of Responses

In order to consider proposals the City must receive at least three responses to its RFQ. If the City receives fewer than three responses, it will re-advertise the RFQ in accordance with General Statute requirements. After the second solicitation, the City may consider proposals even if three are not received and will follow the same procedures used for the initial solicitation.

It is the sincere intention of the Owner to make every effort to be fair and equitable in its dealings with all candidates for selection. If, however, the City should determine that none of the Design-Build teams submitting are advantageous to the City of Durham, **the City reserves the right to accept or reject any or all Statement(s) of Qualifications with or without cause.** Issuance of this Request for Qualifications does not commit the City of Durham to award a contract, to pay any costs incurred in preparation of a proposal or to procure or contract for related services or supplies.

End of Section Five

SECTION SIX -
CHECKLIST FOR QUALIFICATIONS SUBMISSION

6.01 Required Statement of Qualifications items

Submitters must include the following mandatory checklist items (☐) as part of their SOQ:

☐ **Cover Letter** – *1 page*

Qualifications must include a Cover Letter with the complete name and address of the prime firm/company and the name, mailing address, and telephone number of the person the City should contact regarding the Qualification. If there are multiple firms proposed as one team, each firm must describe itself accordingly in the RFQ submittal. **Indicate on the first page of the submittal which firm company is the lead Design-Builder, any firm/company qualifying as a minority entity and the individual whose signature grants authority to bind Submitter to the provisions of the RFQ.**

☐ **Table of Contents** – *1-2 pages*

Must include corresponding tabs/dividers in the body of the submittal to identify each section. Placing multiple tabs on a single page is perfectly acceptable. If more than one item in the table of contents can be started on the same page then place all corresponding tabs on that page.

☐ **Executive Summary** – *1 page*

A brief narrative statement of understanding of the scope of work, key challenges and the submitter's overall vision and approach for the successful development of a high quality project consistent with the minimum criteria requirements outlines in this RFQ.

☐ **Project Background and Understanding** – *1 page*

Include a brief description of the Firm/Team's knowledge of the Project Background and context.

☐ **Project Approach and Action Plan** – *2-3 pages*

Provide a detailed statement of the Firm/Team's proposed Approach and Action Plan to successfully complete the work. Firm/Team's plan of action should include both functional and personnel organization which indicates the Firm/Team's specific approach to accomplishing the Project Scope. Describe the challenges anticipated for performing the requested services that may impact the scope, schedule or budget and the proposed solutions to address these concerns. Include references where such solutions were utilized in the past.

☐ **Firm/Team Qualifications and Experience** – *4-6 pages*

Section shall include a brief description and history for each firm/company on the proposed team including number of years the firm/company has been in business and its growth history, experience in projects with the City of Durham and any past or current experience with the proposed Design-Build team. Indicate:

1. Company / Firm name.
2. Physical address- and if different, mailing address & zip code.
3. E-mail address and name of primary contact at each company/firm.
4. Main telephone number and direct telephone number for contacts.

5. Number of years in business for each company/firm.
6. Form of firm/company ownership including state of residency or incorporation. Include description of the submitter/s company structure: i.e. sole proprietorship, partnership, corporation, Limited Liability Company (LLC), joint venture or other structure.
7. Also briefly describe projects that your firm/company has completed in the past five years that also required design-build services and were valued at or above $3,000,000. Also briefly describe the largest project your firm/company has completed within the past five years and indicate the delivery method used on that largest project. These projects may also be described in further detail in related experience section. (See following section below for additional information.)
8. List any active or pending litigation with owners, subcontractors and other construction-related entities and explain. List and briefly describe any and all legal actions for the past three years in which respondent has been a debtor in bankruptcy, a defendant in a lawsuit for deficient performance under a contract or agreement; a respondent in an administrative action for deficient performance, or a defendant in a criminal action. **Failure to fully comply with this item will be grounds for elimination from the RFQ process.**
9. Has the firm/company ever failed to complete any work awarded to it or has it been removed from any project awarded to the firm? If so, explain.

☐ **Related Design-Build Project Experience** – *3 pages*

Provide 1/2 page descriptions for five (5) reference projects for which the Firm/Team has provided professional design and construction services of a nature, quality, size and scope specifically similar to those required in this RFQ. Include:

1. Name of the organization to which services were provided.
2. Project location.
3. Start and complete dates during which services were performed.
4. Brief description of the project.
5. Cost description (which at a minimum must include: original project budget, final project cost and an explanation of any difference in original and final costs if applicable, construction value, fee for professional services)
6. Proposed team members that worked on the projects including their title and role on that project.
7. Identification of a current contact reference including organizational title, address, telephone numbers and e-mail address for each project.

   Obsolete contact information will be grounds for elimination from the RFQ process.
8. List five (5) major trade contractor references (5 total not 5 per project.) Include company name, contact name, e-mail address and telephone number.

   Office Submitting Qualifications: If the firm/company has multiple offices, the qualification statement should include information about the parent company and branch office separately. Identify the office from which the project will be managed and that office's proximity to the project site. Parent company (or general office) financial information as totals will be acceptable IF "parent" (or "general office") means that it is financially responsible for the liabilities of the branch office. If the parent company is not so responsible, meaning that its financial resources are not available to the office that will perform the contract, it will be misleading to the Owner to offer the financials of any office other than the one with the prospect of a contract with the Owner.

☐ **Project Team Personnel Selection or Proposed Selection Strategy** – *1-2 pages*

Provide either of the following (and include SDBE goals / requirements where applicable):

1. An explanation of project team selection to accompany a list of licensed contractors, licensed subcontractors and licensed design professionals whom the design-builder proposes to use for the project's design and construction as noted in Proposed Personnel section below *OR*
2. Provide 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 State of North Carolina General Statutes.

☐ **Proposed Personnel** – *8-10 pages*

Provide general information about personnel capability and a list of qualified and available staff and resources including classifications, numbers of employees, respondent's ability to provide sufficient qualified personnel to this project upon award, the locations and staffing of relevant offices and an organizational chart of staff including the percentage of time they will be assigned to the project. Describe specific roles and responsibilities identifying experience and ability for key personnel and the intended interface between the design-build team, the General Services Department and any other potential consultants involved in this project. (Note: any proposed subcontractor personnel must also include additional submitted resume and/or project experience information per the requirements listed in this section for similar disciplines/trades.)

1. Provide a list of licensed design professionals and, if already selected, the licensed contractors and licensed subcontractors whom the Design-Build team proposes to use for the project's design and construction including a detailed list of key personnel as noted below.
2. The key personnel, at a minimum, are the proposed Designer(s) of Record, supporting project architects and engineers, project superintendent, Design-Builder's project manager, project director, estimator, preconstruction manager and the executive in charge. Submit a resume for each individual with relevant information as described below including title, education, previous work experience, applicable training and certifications, previous projects with the firm/company and length of service with the firm/company. At this stage, firms/companies may list more than one person qualified and available for the proposed project.

Project Experience of the Designer should include:

Relevant experience on other Design-Build projects as designer especially with buildings comparable to this project in directly applicable ways. **If the designer claims experience acquired by hiring of or participation by personnel who were/are members of another firm(s) at the time of the experience, please express that fact and disclose the name of the other firm(s).** Describe no fewer than five projects in order of most relevant to least relevant that demonstrate the Designer/Team's capabilities to provide design services for the project at hand. Identify whether the projects involved any of the firms/companies included in responder's submittal for this RFQ. For each project, the following information should be provided:

1. Project name.
2. Project location.
3. Dates during which services were performed.
4. Physical description (e.g., square footage, number of stories, site area).

5. Cost description (this description, at a minimum, must include: original project budget; final project cost and explanation of any differences in the original and final costs, if applicable)
6. Brief description of project.
7. Services performed as Designer.
8. Statement of performance versus owner expectations in the areas of cost, quality, and schedule.
9. Owner reference(s).

Relevant Project Experience of the Builder should include:
Description of project experience with similar building types and Design-Build delivery method or performing as a general contractor on comparable types and sizes of projects. If the builder claims experience acquired by hiring of or participation by personnel who were members of another firm(s) at the time of the experience, please express that fact and disclose the name of the other firm(s). Describe no fewer than five projects in order of most relevant to least relevant that demonstrate the Builder/Team's capabilities to perform the project at hand. Identify whether the projects involved any of the firms/companies included in responder's submittal for this RFQ. For each project, the following information should be provided:

1. Project name.
2. Project location.
3. Dates during which services were performed.
4. Physical description (e.g. square footage, number of stories, site area)
5. Brief description of project.
6. Cost description (this description, at a minimum, must include: original project budget; final project cost; and why there exists a difference in the original and final costs, if any).
7. Services performed as Builder.
8. Statement of performance versus owner expectations in the areas of cost, quality, and schedule.
9. Owner reference(s).

☐ **Safety Evaluation Questionnaire – Safety Record Information** – *1 page*

Complete the Safety Evaluation Questionnaire attached in this RFQ's appendix and include with the Qualification submittal.
Note: Failure to include this safety information will be grounds for elimination from the RFQ process.

☐ **Firm/Team Financial Responsibility Information** – *1 page*

1. List total annual billings for each of the past three calendar years. If forming a partnership, list separately by company/firm.
2. List the contact persons, addresses, and telephone numbers for your insurance carrier and agent.
3. List the contact persons, addresses, and telephone numbers for the company/firm's bonding company and agent.
4. What percentage of your company/firm's work has been negotiated during the past five years?
5. Supply firm's Current Ratio (Current Assets / Current Liabilities) experience for the last five years, with a signed statement which shall be placed in the responder's SOQ submittal's appendix section.

☐ **Project Controls / Deliverables - Quality and Schedule** – *2-3 pages*

Provide information on managing the quality of proposed deliverables including a proposed milestone schedule that illustrates total project time (in weeks) from award of contract through project completion, a quality budget including Professional Services Fee and Construction Costs and a general Quality Assurance Plan and Safety Plan that identifies how quality control will be implemented throughout the design and construction process.

☐ **Equal Business Opportunity Program Forms**

Participation Goals for Design and Professional Services

Based on the specifications outlined for this project, the M/SDBE participation goal for design and professional services should be 5%.

Based on the specifications outlined for this project, the W/SDBE participation goal for design and professional services should be 5%.

In accordance with the City Ordinance, all consultants/contractors are required to provide information requested in the "SDBE Professional Services Forms" package. It is the intention of the City that proposals that do not contain the appropriate, completed "Professional Services Forms" will be deemed non-responsive and ineligible for consideration.

Per the requirements outlined in the SDBE section of this RFQ's appendix, the following forms are required of all consultants/contractors and must be completed and included in the submittal:

1. "Declaration of Performance"
2. "Participation Documentation"
3. "Managerial Profile"
4. "Equal Employment Opportunity Statement" and the
5. "Employee Breakdown"
6. The "Letter of Intent to Perform as a Sub-consultant/Subcontractor" must be completed for SDBEs proposed to perform on a contract and must be included in the submittal.
7. The "SDBE Goals Not Met/Documentation of Good Faith Efforts" form must be submitted if the goals are not met.

   The "Post Proposal Submission SDBE Deviation" form is not applicable at this time.

Participation Goals for Construction

Based on the Cost Estimate outlined for this project, the Minority SDBE participation goal for construction should be 15%.

Based on the Cost Estimate outlined for this project, the Women's SDBE participation goal for construction should be 5%.

An "Equal Business Opportunity Plan" document must be submitted with your proposal.

The "Letter of Intent to Perform as a Subconsultant" should only reflect the SDBE firms and the percentage of participation. Please omit the dollar amount of the subcontracts. In place of a dollar amount indicate "to be determined or TBD."

Indicate whether submitter is a Small Disadvantaged Business Enterprise and note any SDBE firms included on the Design-Build Team per the requirements outlined in the Equal Business Opportunity Program section of this RFQ.

In addition, taking into consideration that dollar amounts are not assigned at this initial stage of the project, outline Design-Build Team's strategy to meet City's SDBE goals and Good Faith efforts for construction at the projected time of negotiated contract price for the project and as described in the included EO/EA documents and forms.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about SDBE Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560- 4180.

☐ **Conclusion and Statement of Why the Proposing Firm Should Be Selected** – *1 page*

This section provides each Firm/Team the opportunity to provide specific information that differentiates them from others in the RFQ process.

☐ **Qualification Appendix Attachments**

Include copies of:

1. Signed Team Declaration form (see Section 8 of this RFQ) confirming certifications and submission items
2. Joint Venture agreement (if applicable)
3. Professional Architectural / Engineering and Contractor's licenses
4. Financial responsibility information with signed statement of Current Assets/Current Liabilities

Please do not place or ask to place in the appendix any additional information not explicitly required to be placed there.

End of Section Six

SECTION SEVEN –
PRE-SUBMITTAL CONFERENCE AND CLARIFICATIONS

7.01 Pre-Submittal Conference

A pre-proposal conference will be held on the date noted on the title page of this RFQ at the General Services Department, 2011 Fay Street, Durham, NC 27704. **Attendance for those intending to submit Qualifications is mandatory.** The project will be described and key City participants will be introduced.

Questions concerning the Project may be asked at the pre-bid conference; however, oral answers are not authoritative. Pre-proposal conference questions should be submitted to the Department of General Services in writing prior to the pre-proposal meeting. Questions that arise during the pre-proposal conference must also be submitted in writing per the schedule noted in this RFQ. Meeting minutes will not be taken. Written questions will be answered in an addendum posted on the City's website:

http://durhamnc.gov/ich/as/fin/Pages/bids.aspx

Questions received by the Department of General Services after this date will not receive a response or be the subject of addenda. Any oral questions that are asked at the pre-proposal conference and not received in writing will not be recorded in the addendum. Firms who are registered as interested firms will receive the addendum via email.

Except for submission of questions, discussed further below, proposers should not contact any members or employees of the City of Durham regarding any aspect of this procurement until after the award of the contract. Questions may be asked at the pre-submittal conference.

Questions not asked at the pre-submittal conference must be submitted in writing via email to:

Dave Delcambre, AIA, Project Manager
dave.delcambre@durhamnc.gov

All follow-up questions from the pre-submittal conference, as well as any questions that have been submitted in writing before the deadline, will be compiled and answered in writing. The deadline for submission of questions relating to the RFQ is the time and date shown in the Project Schedule in this RFQ. Answers will be distributed simultaneously by email to the contact person in the firms/teams that attended the pre-submittal conference and to the firms/teams that have made their interest in the project known.

7.02 Submittals and Clarifications

It is the responsibility of each submitter to examine the entire RFQ, seek clarifications in writing, and review their submittal for accuracy before submitting their qualifications. Once submission deadlines have passed, all submissions will be final. The Owner will not request clarification from any individual submitter relative to their submission, but reserves the right to ask for additional information from all parties that have submitted qualifications.

7.02.1 It is the sincere intention of the Owner to make every effort to be fair and equitable in its dealings with all candidates for selection. If, however, the City should determine that none of the Design-Build teams submitting are advantageous to the City of Durham, **the City shall have the absolute right to reject any and all submittals**.

End of Section Seven

SECTION EIGHT –
DESIGN-BUILD TEAM DECLARATION STATEMENT

(Include a signed copy of this form in the submitted Statement of Qualifications appendix section)

1. *We (the submitting Design-Build entity) certify that each licensed design-build team member including design professionals and sub-consultants included in this submittal was selected based upon demonstrated competence and qualifications in the manner provided in the State of North Carolina's General Statute on procurement of construction services (G.S. 143-64.31.)*
2. *We certify that our Design-Build entity's "Designer(s) of Record" have current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work.*
3. *We certify that our Design-Build entity's "Builder" has a current North Carolina Contractor's unlimited license.*
4. *We certify that our firm/company will have and maintain liability insurance coverage for a total of $1 million/occurrence & $1 million/general aggregate for commercial general liability, and not less than $1 million per claim for commercial business automobile liability.*
5. *We certify that we will have coverage for professional liability and errors and omissions by all Designer(s) of Record / Design Professionals of not less than $1 million per claim*
6. *We certify that our firm has sufficient bonding capacity to provide Labor and Material Payment and Performance bonds with coverage of each equal to the total cost of the project.*
7. *We certify that our firm can and will obtain a Builder's Risk Insurance Policy for this project with coverage equal to the total cost of the project.*
8. *We certify that our firm/company/personnel have/has no potential or actual conflict of interest to report and that no relationships, transactions, circumstances or positions held are believe to contribute to any such conflict of interest.*
9. *I hereby certify that the information set forth in this declaration is true and complete to the best of my knowledge.*

_____

(Authorized Signature, Title, Design-Build Entity Name and Date)

By signature on this Qualification, responders certify that they comply with:

a. The laws of the State of North Carolina
b. The applicable portion of the Federal Civil Rights Act of 1964
c. The Equal Employment Opportunity Act and the regulations issued there under by the federal government
d. The Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government
e. All terms and conditions set out in this RFQ
f. A condition that the Qualification submitted was independently arrived at, without collusion, under penalty of perjury
g. That their bids, if applicable, will remain open and valid for at least **120 days.**

If any responder fails to comply with sections [a] through [g] of this paragraph, the City of Durham reserves the right to disregard the Qualification, terminate the contract, or consider the Firm/Team in default.

End of Section Eight

SECTION NINE

EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROVISIONS AND ADA NOTICE

9.01 Non-Discrimination Provision

The City of Durham opposes discrimination on the basis of race and sex and urges all of its Firm/Teams to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under city contracts.

9.02 EEO Provisions

During the performance of this Contract the Firm/Team agrees to conform to the EEO provisions as described in the appendix to include the following:

a. The Firm/Team shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Firm/Team shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Firm/Team shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these provisions.

b. The Firm/Team shall in all solicitations or advertisements for employees placed by or on behalf of the Firm/Team, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

c. The Firm/Team shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.

d. In the event of the Firm/Team's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Firm/Team ineligible for further City contracts.

e. Unless exempted by the City Council of the City of Durham, the Firm/Team shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such Subcontractor and vendors.

9.03 Notices under the Americans with Disabilities Act (ADA).

The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities, The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact the office of Stacey Poston, ADA Coordinator, Voice: 919-560-4197 x254; stacey.poston@durhamnc.gov, as soon as possible but **no later than 48 hours** before the scheduled event.

End of Section Nine

SECTION TEN
Appendices

10.01 Appendix A - Trade Secrets and Confidentiality
10.02 Appendix B - SDBE Professional Services Forms, SDBE Professional Services Listing and SDBE Construction Listing
10.03 Appendix C - Insurance Requirements
10.04 Appendix D - Safety Evaluation Questionnaire – Safety Record Information
10.05 Appendix E - Non-Collusion Form and Corporate Resolution Form
10.06 Appendix F – Site Information
10.07 Appendix G - Schematic Prototype Building Floor Plan
10.08 Appendix H - Schematic Prototype Building Exterior Elevations
10.09 Appendix I – Sample Form of Contract

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Appendix A – Trade Secrets and Confidentiality

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

(a) Designation of Confidential Records. The terms "Trade Secrets" and "record" are defined in (a)(1) (Definitions). To the extent that the Firm/Team wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the Firm/Team shall prominently designate the material as "Trade Secrets" at the time of its initial disclosure to the City. The Firm/Team shall not designate any material provided to the City as Trade Secrets unless the Firm/Team has a reasonable and good-faith belief that it contains a Trade Secret. When requested by the City, the Firm/Team shall promptly disclose to the City the Firm/Team's reasoning for designating individual materials as Trade Secrets. In providing materials to the City, the Firm/Team shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City's use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated "Trade Secrets" in accordance with this section. Whenever the Firm/Team ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

(1) Definitions.

"Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

"Record" means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the Firm/Team's SOQ.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

(1) decline the request for access,
(2) notify the Firm/Team of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or
(3) notify the Firm/Team of the request and that the City intends to decline the request.

Before declining the request, the City may require the Firm/Team to give further assurances so that the City can be certain that the Firm/Team will comply with subsection (c) (Defense of City).

(c) Defense of City. If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the Firm/Team shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City's non-disclosure of the records. In providing that defense, the Firm/Team shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney. Definitions. As used in this subsection (c), "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys' fees, and interest. Indemnitees" means the City, and officers, officials, independent contractors, agents, and employees, of the City. "Indemnitees" does not include the Firm/Team. The City may require the Firm/Team to provide proof of the Firm/Team's ability to pay the amounts that may reasonably be expected to become monetary obligations of the Firm/Team pursuant to this section. If the Firm/Team fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the Firm/Team.

Appendix B –

SDBE Professional Services Forms
Equal Business Opportunity Program (EBOP) Plan Description
SDBE Professional Services Firms Listings
SDBE Construction Firms Listing

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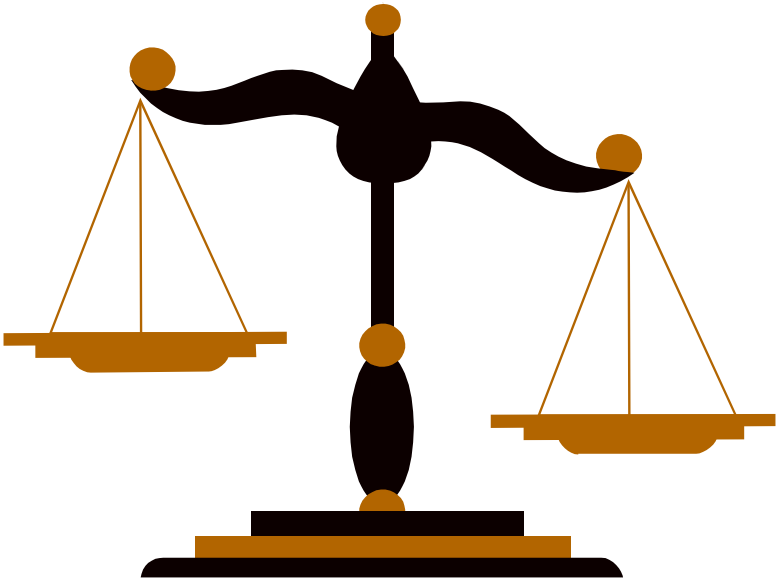
CITY OF DURHAM
SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PROFESSIONAL SERVICES FORMS

Revised 06/08



Mailing Address:

101 City Hall Plaza
Durham, North Carolina 27701
Phone: 919-560-4180
Facsimile: 919-560-4513

Street Address:

101 City Hall Plaza (Annex)
Durham, North Carolina 27701

The Department of Equal Opportunity / Equity Assurance

Durham – Where Great Things Happen

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

Goals

To increase the dollar value of all City contracts for goods and services awarded to small disadvantaged business enterprises, it is a desire of the City that the Firm/Team will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about "SDBE Professional Services Forms" should be referred to Deborah Giles or other department staff at (919) 560- 4180.

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Equal Business Opportunity Ordinance
SDBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your proposal.

SDBE Participation Documentation must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Managerial Profile must be used to list the managerial persons in your workforce who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your proposal.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Letter of Intent to Perform as a Sub-consultant/Subcontractor must be completed for SDBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission SDBE Deviation
Post proposal submission SDBE deviation participation documentation must be used to report and deviation from SDBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

SDBE Goals Not Met/Documentation of Good Faith Efforts
It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors.
Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase SDBE participation such that the amounts subcontracted are consistent with the established goals.

Equal Business Opportunity Program Plan
Submitters are required to provide an Equal Business Opportunity Program (EBOP) Plan. This document is required in order to fully evaluate and determine Minority / Women's Small Disadvantaged Business Enterprise (SDBE) participation goals for the construction portion of the project.

SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide Small Disadvantaged Businesses equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall establish SDBE participation goals for each contract to be awarded by the City. Project specific goals for each project or contract will be based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

In addition to SDBE's specifically certified by the City and listed in a database maintained by the EO/EA Department, the City of Durham may consider a formal certification of another entity to determine whether an applicant meets requirements of the Equal Business Opportunity Program, provided that the City Manager or designee determines that the certification standards of such entity are comparable to those of the City. The City of Durham has determined that the following certifications are comparable to its own and may be used by bidders/proposers: North Carolina Department of Transportation (N.C. DOT), United States Small Business Administration (U.S. SBA) and Raleigh-Durham Airport Authority (RDU).

In lieu of SDBE's listed in its SDBE System, the City of Durham will accept women and minority firms certified by N.C. DOT, U.S. SBA and RDU as meeting its SDBE goal requirements provided the bidder/proposer submits evidence that the firm is currently certified by one of the stated entities at the time of bid/proposal. Failure to provide evidence of certification may disqualify the firm's participation for the purpose of meeting SDBE goals.

Any firm submitted in this manner will be contacted and urged to complete an abbreviated certification process with the City of Durham. For purposes of this document and associated forms, any reference to a "City Certified SDBE," an "SDBE certified by the City" or similar reference shall include reference to a qualified women or minority owned firm certified and approved in accordance with the above paragraphs, even where specific reference is made to the City SDBE database.

Small Disadvantaged Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services SDBE Forms.

Selection Committee for Professional Services

A selection committee shall be established to be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director and Purchasing Manager. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;

4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, SDBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. SDBE Participation; and
12. Documentation of Good Faith efforts.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

Contract Award

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

Project Evaluation

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:

2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:

3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

a) _____ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and

b) _____ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.

c) _____ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

_____

Date *Authorized Signature*

PARTICIPATION DOCUMENTATION
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)

Names of all firms Project (including prime and subconsultants/sub-contractors)	Location	SDBE Firm Yes/No	Nature of Participation	% of Project Work

TOTAL _____

_____
Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

_____
Signature - Authorized Officer of Prime Consultant/Contractor Firm

_____
Date

Managerial Profile

Name of Firm: _____

Contact Person: _____

Title: _____

Address: _____

Telephone No: _____

Date: _____

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition* of the City of Durham's Equal Business Opportunity Ordinance.

Managerial Employees

NAME	POSITION	SOCIALLY/ ECONOMICALLY DISADVANTAGED* (YES/NO)

* M-Minority(African American) W-Woman Other-H-Hispanic, AI-American Indian, AS-Asian American, Handicapped

EQUAL EMPLOYMENT OPPORTUNITY STATEMENT
(You may submit your organization's EEO policy in lieu of this sheet)

EMPLOYEE BREAKDOWN

Part A – Employee statistics for the primary location.

				M——a——l——e——s					F——e——m——a——l——e——s				
Employment category	Total employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

Part B – Employee statistics for the consolidated company.
(*See instructions for this form on whether this part is required.*)

				M——a——l——e——s					F——e——m——a——l——e——s				
Employment category	Total employees	Total males	Total females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a SDBE:

Minority (African American) ☐ Woman ☐ Hispanic ☐
American Indian ☐ Asian American ☐ Handicapped ☐

The SDBE status of the undersigned is certified by the City of Durham as identified by the attached copy of certification or the attached SDBE Contractor Identification List supplied by the EO/EA Department.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

ITEMS	**PROJECTED COMMENCEMENT DATE**	**PROJECTED COMPLETION DATE**

The consultant will subcontract _____% of the dollar value of this contract to a SDBE subconsultant/subcontractor and/or non-SDBE subconsultant/subcontractor.

The undersigned will enter into a formal agreement in the amount of $___*-TBD-*_____ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name_____Title_____

Company_____Telephone_____

Address_____

Signature_____

REQUEST TO CHANGE SDBE PARTICIPATION

Project: _____
Name of bidder or consultant:_____
Name and title of representative bidder or consultant: _____
Address (including zip code): _____
Telephone number: _____ Fax number: _____
Email address: _____
Total amount of original contract, before any change orders or amendments: _____
Total amount of the contract, <u>including</u> all approved change orders and amendments to date, but <u>not counting</u> the changes proposed in this form: _____
Dollar amount of changes proposed in this form: _____
The proposed change *(check one)* ☐ **increases** ☐ **decreases** the dollar amount of the bidder's/consultant's contract with the City.
Does the proposed change decrease the SDBE participation? *(check one)* ☐ **yes** ☐ **no**
If the answer is **yes**, complete the following:

<u>BOX A.</u> For the subcontract proposed to be changed (increased, reduced, or eliminated):
Name of subconsultant: _____
Goods and services to be provided before this proposed change: _____
_____
Is it proposed to eliminate this subcontract? ☐ yes ☐ no
If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding $5,000 in environmental work and deleting $7,000 in architectural):*
_____
_____

Dollar amount of this subcontract before this proposed change: _____
Dollar amount of this subcontract after this proposed change: _____
This subconsultant is *(check one):*
☐ 1. City-certified Black-owned SDBE
☐ 2. City-certified Women-owned SDBE
3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as
3(a) ☐ Black-owned SDBE 3(b) ☐ Women-owned SDBE
☐ 4. not a City-certified SDBE

<u>BOX B</u>. Proposed subcontracts other than the subcontract described in Box A above
Name of subcontractor for the new work: _____
Goods and services to be provided by this proposed subcontract: _____
_____
Dollar amount proposed of this proposed subcontract:
_____
This subcontractor is *(check one):*
☐ 1. City-certified Black-owned SDBE
☐ 2. City-certified women-owned SDBE
3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as
3(a) ☐ Black-owned SDBE 3(b) ☐ Women-owned SDBE
☐ 4. not a City-certified SDBE

Add additional sheets as necessary.

SDBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage SDBEs along with other criteria that the City Manager deems proper:

Name of Bidder:

_____

If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your firm attaching to this questionnaire?** _____ *(Don't count the 2 pages of this questionnaire.)*

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time <u>before</u> your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. **SOLICITING SDBEs.**

(a) Did your firm solicit, through all reasonable and available means, the interest of <u>all</u> SDBEs certified (that is, in the City's database) in the scope of work of the contract? ☐ **yes** ☐ **no**

(b) In such soliciting, did your firm advertise? ☐ **yes** ☐ **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? ☐ **yes** ☐ **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? ☐ **yes** ☐ **no**

(d) Did your firm attend the pre-bid conference? ☐ **yes** ☐ **no**

(e) Did your firm provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

(f) Did your firm follow up with SDBEs that showed interest? ☐ **yes** ☐ **no**

(g) With reference to the SDBEs that your firm notified of the type of work to be subcontracted , did your firm tell them:

(i) the specific work your firm was considering for subcontracting? ☐ **yes** ☐ **no**
(ii) that their interest in the contract is being solicited? ☐ **yes** ☐ **no**
(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? ☐ **yes** ☐ **no**

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by SDBEs in order to increase the likelihood that the goals would be reached? ☐ **yes** ☐ **no**

(b) If **yes**, please describe the portions selected. **ANSWER:**

3. NEGOTIATION. In your answers to 3, you may omit information regarding SDBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of SDBEs that you contacted?
ANSWER:

(b) Describe the information that you provided to the SDBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the SDBEs that your firm made contact with? Be specific. **ANSWER:**

4. ASSISTANCE TO SDBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance?
☐ **yes** ☐ **no** (Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist SDBEs to obtain bonds, lines of credit, or insurance? ☐ **yes** ☐ **no** If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors?
☐ **yes** ☐ **no** If **yes**, describe. **ANSWER:**

5. GOODS AND SERVICES. What efforts did your firm make to help interested SDBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit SDBEs for the work? ☐ **yes** ☐ **no**
Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit SDBEs for the work? ☐ **yes** ☐ **no**
Please explain. **ANSWER:**

Equal Business Opportunity Program Plan

Submitters are required to provide an Equal Business Opportunity Program (EBOP) Plan. This document is required in order to fully evaluate and determine Minority / Women's Small Disadvantaged Business Enterprise (SDBE) participation goals for the construction portion of the project. The SDBE construction goals for this project are 15% MSDBE and 5% WSDBE.

The EBOP Plan is a narrative document that shall address the following issues:

- ***a.*** *Use of the City of Durham SDBE database.*
- ***b.*** *Provision of written notice to all SDBE's listed in the City of Durham database that might perform the work to be subcontracted.*
- ***c.*** *Selection of feasible portions of work to be performed by SDBE's.*
- ***d.*** *Consideration of all proposals received from SDBE's.*
- ***e.*** *Provision of assistance in reviewing applicable plans, specifications and descriptions of items in a proposed project.*
- ***f.*** *Advertisement in general circulation, trade association and minority/women focus media in concerning subcontracting opportunities.*
- ***g.*** *Timeliness of advertisements to permit sufficient time for response by SDBE's.*
- ***h.*** *Provision of written notice to a reasonable number of specific SDBE's that their interest is being solicited in sufficient time for effective participation.*
- ***i.*** *Follow-up to determine with certainty SDBE interest in participation in project.*
- ***j.*** *Use of available minority/women small disadvantaged business community organizations, contractor groups; local, state and federal business assistance offices; and other organizations that provide assistance in recruitment and placement of SDBE's.*
- ***k.*** *Voluntary efforts by your firm to increase the number of minorities and women at the higher skill responsibility levels within the firm.*

SDBE Listings for Design and Professional Services

Name	Mailing Address	City	State	Zipcode	Gender/Race ID	Contact	Phone	Email	Services	Licenses
A-1 Consulting Group, Inc.	117 International Drive	Morrisville	NC	27560	AS	Dr. Vinnie Goel	919-469-4800	Contact@A1cons.com	Engineering: Civil, Structural, Geotechnical, GIS, Landscape, Environmental, Brownfield, Monitoring wells, Wetlands, Asbestos/Lead/UST abatement, Construction, Const. management, Special inspections, materials testing, Estimating, Scheduling.	NC P.E. Certificate No. 18283 | NC Engineer License C-1031
AeroRaq Engineering, Inc.	8511 Davis Lake Parkway, Suite C6-205	Charlotte	NC	28269	M	Hakeem Bailey	704-469-8463	hakeembailey@aeroraq.com	Mechanical Engineering; Plumbing Engineering; Electrical Engineering	NC Engineering LIcense#C-3509
Alabi Architecture, PLLC	6409 Fayetteville Road, Suite 120-252	Durham	NC	27713	M	Mayowa Alibi	571-318-8669	mayowa@alabiarchitecture.com	architectural design, drawing documentation, and construction administration services	NC Board of Architecture Registration#10287 & 52862 NC Arch. Prif.Lic.#200002392432
Alison A. Pockat, ASLA	106 Steep Bank Drive	Cary	NC	27518	W	Alison A. Pockat	919-363-4415	aapockat@earthlink.net	Landscape Architecture	Landscape Architects Certificate #0563, NC Dept. of Revenue Privilege Lic.
Asoka & Company	717 Belgreen Road	Durham	NC	27713	M	Yasmin Fozard	919-682-2860	yfozard@aol.com	Landscape Architecture Design;Master Planning;Land Use&Feasibility Studies Green Training	City of Durham Privilege LIcense
BBFoster Consulting, PC	3709 Brookcrest Court	Brown Summit	NC	27214	M	Bellandra Foster	(336)355-7897	bbf@bbfosterconsulting.com	Civil Engineering, Project management, Project Administration, Construction Project Engineering, Utility Coordination, Contract Compliance Monitoring	Engineering NC #037218; Michigan #6201033582;

SDBE Listings for Design and Professional Services

BREE & Associates, Inc.	5315 Highgate Drive, Suite 203	Durham	NC	27713	M	Robert Lancaster	919-469-3330;	bree@breeassociates.com	Construction Administration and Management; Cost Estimating; Claims; Scheduling; Planning; Inspections; Civil Engineering; Traffic Engineering and Transportation Planning, Studies & Data Collection; CEI; Design Support Activities; AutoCAD & Drafting	City of Durham Privilege License; NC Board of Examiners for Engineers & Surveyors Lic. #C-2125
Capstone Civil Group	PO Box 44434	Charlotte	NC	28215	M	Charles Brown	980-938-6770	cbrown@capstonecivilgroup.com	Civil engineering; geotechnical Engineering, Constr. Mat. Testing	NCEngineers and Surveryors License#C-2723
CES Group Engineers, LLP	274 N. Hwy 16 Business, Ste. 300	Denver, NC	NC	28037	W	Judy Heleine	704-489-1500	jheleine@ces-group.net	Civil Engineering; Land Surveying; Landscape Architecture; Environmental Science	State of NC Engineering License # F-1240
CH Engineering, PLLC	PO Box 30128	Raleigh,	NC	27617	W	Maha Chambliss	919-788-0224	mchambliss@ch-engr.com	Transportation/Roadway Design; Storm Drainage Design; Utilities Design; Wastewater & Water Design; General Civil Engineering and Surveying.	N.C. Board of Engineers P-0189
CLH Design	400 Regency Drive, Suite 120	Cary	NC	27511	W	R. Larouche; Christine Hilt	919-319-6716	rlarouche@clhdesignpa.com	Landscape Architecture and Civil Engineering Services	NC Dept. of Revenue Architect Privilege License
DTW Architects & Planners, Ltd.	229 N. Gregson Street	Durham	NC	27701	H	Roberto Sotolongo	919-317-4020	rsotolongo@dtwarch.com	Architectural planning and design	NC Board of Architecture License#4837
Ellen Cassilly Architect, Inc.	600 Foster Street	Durham	NC	27701	W	Ellen Cassilly	919-530-1149	ellen@ellencassillyarchitect.com	architecture	N.C. Board of Architecture
Engineered Designs, Inc.	1151 SE Cary Parkway, Sutie 200	Cary	N.C.	27518	W	Ginger Scoggins	919-851-8481	gscoggins@engineereddesigns.com	consultant engineering-HVAC, plumbing, electrical, fire protection	NC Engineering License No. C-1729

SDBE Listings for Design and Professional Services

G.H. Williams Collaborative, PA	P.O. Box1266	Durham	NC	27702	M	George H. Williams	919-489-9209	ghwilliamscollaborative@gmail.com	Architecture, Planning, Construction Management; Environmental Assessment	N. C. Board of Architects #50654
Gen. 2 design	1100 Huntsman Drive	Durham	NC	27713	M	Ashley Freeland	(240)418-0904	afreeland@gentwodesign.com	Mechanical, Electrical, Plumbing and Fire Protection Designer/Engineers	NC PE License #042267
H2Q Architecture	6127 Westglen Drive	Raleigh	NC	27612	W	Roula Qubain	919-781-2877	roula.qubain@h2q.net	architecture; interior design; planning;consulting & construction administration	NC Board Architecture License#8740
HH Architecture, PA	520 S. Harrington Street	Raleigh	NC	27601	W	Kristen M. Hess	919-828-2301	khess@hh-arch.com	Architecture, Computer Modeling, Const. Administration, Cost Management, Facility Assessment, Interior Design, Master Planning, Programming, Rendering	NC Architect License #9290
JC Waller & Associates	524 S. Elm Street	Greensboro	NC		M	Juhann Waller	(336)697-2637	jwaller@jcwaller.com	Civil Engineering, Site Development, Surveying, Water Lines/Sewer Lines and Infrastructure Design	State of NC License # C-3934
Kennerly Engineering, Inc.	193 Greenbriar Lane	Lexington	NC	27295	W	Nikole Kennerly	(336)775-2118	nicole.kennerly@kennerlyengineering.com	Water and Sewer Design, Construction Administration, Commercial and Residential design,Inspection Services,Erosion control design,Transportation and airport design and Civil Engineering.	State of NC #C-3900
KHAFRA Engineering Consultants, Inc.	225 Peachtree Street N.E., Suite1600	Atlanta	GA	30303	M	Nikki Uhuru	404-525-2120	nuhuru@khafra.com	engineering-electrical, environmental, civl, structural, mechanical;enviromental services; water treatment plants; vulnerability assessments;	City of Atlanta Business; NC Engineering License#013901
MA Engineering Consutants, Inc.	598 East Chatham Street, Suite 137	Cary	NC	27511-6956	AS	Arvin Maniktala	919-297-0220	maec@maec.com	Civil-site;surveying & HD Laser scanning; roadway design; hydraulic & hydrologic design; water, sewer & gas utility design; utility coord.;GIS; photogrammetry;utility location & vasuum excav.; NEPA;web & video services; 3D modeling an& 3D sims.	NC Board of Engineers#F-160
Ray Group Consulting Engineers, Inc.	1827 Powers Ferry Rd,Bld 20,Ste.100	Atlanta	GA	30339	AS	Ashim K. Ray	770-953-1443	ashmir@raygroup.net	Electrical Engineering, Instrumentation, Control Systems, HVAC and Plumbing Engineering	NC Board of Examineers for Engineers & Surveyors

SDBE Listings for Design and Professional Services

Ross Linden Engineers, PC	710 W. North Street	Raleigh	NC	27603	W	Laura Ross	919-832-5680	brian@rosslinden.com	Structural Engineering	NC Engineering License #027468
Shermin Ata, Architect, PLLC	4115 S. Elm Eugene Street	Greensboro	NC	27406	W	Shermin Ata	(336)333-5660	sherminata@bellsouth.net	Architectural and Interior Design; Feasibility Study and Site Planning; Construction Documents and Construction Administration	State of NC Architecture License #51901
Spaulding and Norris	972 Trinity Road	Raleigh	NC	27607	W	Stephanie Norris	919-854-7990	Stephanie@spauldingnorris.com	Civil Engineering, Land Planning, Environmental Permitting	NC Professional Engineering License
Susan Hatchell Landscape Arch., PLLC	711 West North Street	Raleigh	NC	27503	W	Susan Hatchell	919-838-9600	susan@susanhatchell.com	landscape architecture	NC Landscape Architect Privilege License
The Harris Collaborative, PLLC	1901 West Lakewood Avenue	Durham	NC	27707	M		(919)625-8302	peharris@earthlink.net	Architecture, Programming and Planning	State of NC Board of Architecture #51711
Yongue Architects, PA	3203 Yorktown Avenue, Ste. 121	Durham	NC	27713	M	Joseph Henry Yongue	919-544-0145;	yongueaia@aol.com	full architectural services; planning;environmental assessment;Licensed Home Inspector; construction management	NC Department of Revenue Architect Privilege License, NC Board of Architectur

SDBE Listings for Construction Services

Name	Mailing Address	City	State	Zipcode	Gender/Race ID	Contact	Phone	Fax	CellPhone	Email	Services	Licenses
4J Construction Company,Inc.	333 North Main Street	Dyer	TN	38330	M	Lafayette Johnson	731-692-2526	731-426-2750	731-692-2528	4jinc@bellsouth.net	concrete-placing and finishing, slab, tying steel, sidewalks, foundations, curbs, gutters and mass pour concrete projects	
Abram Construction, Inc.	2828-A Qieen City Drive	Charlotte	NC	28208	M	William Abram	704-392-4002	704-392-4081	704-407-7163	abramconstruction@mail.com	concrete; curb and gutter; site grading;storm drain; storm drain structures; clearing; erosion control;site concrete; water and sewer; sidewalks and driveways	
ABTAK of Durham,Inc.	11 Logging Trail	Durham	NC	27707	M	Eli Brown	919-259-0091	866-577-5286	919-259-0091	elib@abtakofdurham.com	general contractor;concrete;landscaping; grading; utilities; carpentry	NC Genereal Contractors License#71930 Limited Building
Acculine Surveying	2555 Capitol Drive, Suite D	Creedmoor	NC	27522	W	Dorothy Currin	919-528-7979	919-528-5959	919-215-6542	dorothy@acculinesurveying.com	Surveying	NC Surveyors License # L-3654
Active Construction Services,LLC	P O Box 52620	Durham	NC	27713	M	Shante Stevons	919-206-4440	919-206-4475	919-636-0731	Shante@activeconstructionllc.com	painting; cleaning; demolition;carpentry; general trades; staffing (daily laborers); new construction; renvoations	City of Durham Business
Affordable Allen's Repair Plumbing	403 Southshore Parkway	Durham	NC	27713	M	Ronnie Allen	919-824-0156		919-824-0156	Ronnie.Allen@hotmail.com	plumbing	NC Plumbing Single Family Residential License#31006
Airflow Experts, Inc.	P O Box 1079	Graham	NC	27253	W	Candy Clarke	336-229-1470	336-578-5378	336-261-8939	candyclarke@airflowexperts.com	HVAC Test & Balance & Commissioning	
Anne and Craig Enterprises, Inc. dba Craig Sims Acoustical	PO Box 807	Hillsborough	NC	27278	W	Anne Garibay	919-732-6681	919-732-6699	919-414-3006	Craigsims345@embarqmail.com	Installation of Acoustical Ceilings; Tile	City of Durham Privilege License; Town of Cary
Anthony Peete Electrical Contracting, Inc.	304 Roanoke Dr.	Halifax	NC	27839	M	Antnony Peete	252-536-8497	866-805-6861	252-536-8497	APELECT@msn.com	Electrical Contracting; Network; Fire Alarm; Premises; Data & Communications Wiring	NC Electrical Contractors License Unlimited
ARW Concrete Contracting,LLC	501 W. Williams Street #1496	Apex	NC	27502	W	Wendy Burns	919-267-5124	919-249-1393	919-449-5665	wendyburns@arwraleigh.com	commercial cast in place concrete and reinforcing steel-provide and install	
Atlantic Contracting Co., Inc.	116 Stage Coach Trail	Greensboro	NC	27419	W	Niveen Kattan	336-931-3109	336-931-3108	336-601-1669	info@atlanticcontractinginc.com	Concrete Masonry	NC General Contractors License
B & B Triangle Lawncare	PO Box 25006	Durham	NC	27702	M	Andre Bond		919-384-9300	919-423-1417	abond@bandbtrianglelawncare.com	landscaping;Lawn maintenance;cleaning;construction cleanup; snow removal	City of Durham Privilege License
Bowden Electrical,Inc.	1451 South Elm-Eugene Street, Suite 2105, Box 82	Greensboro	NC	27406	M	Shantine Bowden, Bobby Bowden	336-987-9059	336-510-2782	336-681-2063	sbowden.bowdenelectrical@yahoo.com	Commercial/industrial electrical installation; up fit and renovations; fire alarm installation; electrical cable and wire; electrical components, parts and accessories; electronic equipment; energy collectig equipment	NC Electrical Contractor LIcense#28348-L
Brikwurx	707 Hancock Street	Durham	NC	27704	M	Everett Clay	919-629-3797		919-248-7992	brikwurx@ymail.com	masonry	City of Durham Privilege
Busy Black Trucking, LLC	1111 Snow Hill Road	Durham	NC	27712	M	Anthony Black	919-442-7079	919-471-6232	919-442-7079	busyblacktrucking@nc.rr.com	hauling services-all aggregate materials, rock, sand, dirt, concrete debris, demolition	City of Durham Business
C2 Contractors, LLC	405 Banner Avenue	Greensboro	NC	27401	M	Cornelious "CC" Lamberth	336-379-8806	336-379-9184	336-669-4450	cc@c2contractorsllc.com	telecommunications;printer peripherals;general construction;framing;sheet metal; sheetrock; painting; flooring; electrical; HVAC drop ceilings	NC General Contractor's License#64914 Unlimited Building
Capps Construction & Plumbing, Inc.	2852 Buies Creek Road	Angier	NC	27501	W	Debra Capps Dillo	919-639-4060	919-639-0106	919-422-0332	ccpi4u@earthlink.net	Plumbing	NC Plumbing Contractors License#13946
Carolina Management Team, LLC	PO Box 1409	Enka	NC	28728	W	Wendy Banks	336-431-7708	336-431-7709	828-712-5918	Sales@CMTcoatings.com	painting; industrial coatings application; sand blasting; water blasting; water proofing	Privilege License Raleigh and Winston-Salem
Carrothers Enterprise	40626 B W Road	New London	NC	28127	M	Christopher Carrothers	(704)422-6407	(704)422-6607	(704)984-0145	ccarrothers@windstream.net	Framing, drywall,general trades,demolition, drywall, concrete and masonry.	
CB & H Contracting, Inc.	PO Box 375	Raleigh	NC	27602	M	Samuel Bailey	919-828-8601	919-754-1002	919-539-2320	cbandhcontracting@gmail.com	janitorial; carpet cleaning; pressure washing; painting; stripping and waxing floors	City of Durham Privilege

SDBE Listings for Construction Services

Certified Concrete Construction, Inc.	PO Box 91298	Raleigh	NC	27675	W	Joel Sousa	919-781-5575	919-781-5554	919-442-8358	joel@certifiedconcreteconstruction.com	concrete flat work; curb & gutter; sidewalk; concrete paving; dumpster pads; wheelchair ramps; driveways	City of Durham; City of Raleigh; Town of Cary; Town of Chapel Hill
Cinda NC, LLC	1534 Cher Drive	Durham	NC	27713	M	Virgil Cobb	704-746-7474	866-261-3885	704-746-7474	virgilcobb@yahoo.com	Supplier of building materials/construction supplies; drywall & accessories; metal studs; rebar; roofing; insulation; acoustical ceiling; steel reinforcing mesh; steel bars	
Construction Trade Management, Inc.	6305 Swallow Cove Lane	Raleigh	NC	27614	AS	Barry Kyu	919-341-0688	919-341-4418	919-244-3800	ctm@nc.rr.com	painting; drywall; brick masonry; carpentry; construction	
Coral Home Solutions dba Coral Construction and Design	P.O. Box 628	Carrboro	NC	27510	M	Tiffany Elder	919-627-7843	866-854-4717	919-260-2507	info@coralbuilt.com	general contracting; construction; plumbing; electrical; HVAC; roofing; masonry; drywall; painting; flooring; demolition; concrete	NC General Contractor's License#58672 LImited Building
Core Master, LLC	PO Box 8946	Rocky Mount	NC	27804	M	Lisa Gonzalez	252-451-5661	252-451-5662	252-205-3386	info@coremasterusa.com	concrete core drilling; concrete cutting;floor/wall/hand sawing; controlled demolition	
Cruz Brothers Concrete, Inc.	1572 Payne Road, #75	Graham	NC	27253	H	Maria I. Cruz	336-376-0787	336-376-1115	336-516-5764	ines@cruzbros.com	Concrete-curb & gutter, sidewalks, slabs, driveways	City of Durham Business
D. Washington Group LLC	411 E. Chapel Hill Street, Suite 906	Durham	NC	27587	M	Dewayne Washington	919-794-5948	919-794-5721	919-8167356	dewayne@dwashingtongroup.com	General Contractor; concrete; masonry; demolition; carpentry;gypsum board systems	General Contractor's License#69829
David Hinton Construction Co., Inc.	P.O. Box 471	Middlesex	NC	27557	M	David Hinton	919-284-5493	919-284-9152	919-868-5874	dhconstr@nc.rr.com	curb & gutter; sidewalks; slab work; concrete	
Davidson Construction, LLC	208 Gibson Lane	Clayton	NC	27520	M	Tony Small	919-550-3485	919-550-3485	919-868-7771	davidsonbldg@aol.com	concrete; demolition; sheerock; metal studs; construction	NC General Contracting#63308 Limited Building
Done Right the First Time Contractors	5021 Robinwood Road	Durham	NC	27713	M	Troy White	919-544-7963	919-572-6351	919-824-3325	drtftcontractors@gmail.com	construction services-concrete; painting; drywall; plumbing; electrical; framing; finishing	NC General Contractor's License#69797
Double R Concrete Finishing	6917 Windover Drive	Durham	NC	27712	M	Randy Williams	919-477-3009	919-477-3009	919-624-3009	btear4@aol.com	grading; hauling; concrete placement: grading,forming, pouring and finishing	City of Durham Privilege
Dunlap Paint Contracts, Inc.	P O Box 39597	Greeensboro	NC	27438	W	Karen Mills	336-282-3232	336-282-3637		dunlap.paint@yahoo.com	painting	
Encompass Supply	1404 N. Sycomore Street	Arlington	VA	22205	M	Rudolph Burwell	(703)732-6341	(703)707-7849	(703)732-6341	rburwell@encompasssupply.net	Electrical Supply	
Energy Automation Technologies, Inc.	5921 Hampton Ridge Road	Raleigh	NC	27603	W	Lori Hare	919-390-4943	919-779-8863		lori@energyautomationtech.com	HVAC Installation/Repair;temp.controls,bldg.automation systems,temp sensors,valves&cable	NC Unlimited Electrical License#21733-U; City of Durham Privilege
ETC Concrete Construction Corporation	3829 Opportunity Lane	Raleigh	NC	27603	H	Liz Esteves	919-772-4114	919-772-4174	919-291-5719	liz@etccontractors.com	concrete-sidewalks,paving,footings; masonry-block and brick	
FM Supplies	3760 High Point Rd.	Winston-Salem	NC	27107	M	Fassil Mitiku	336-391-8653	336-788-7455	336-391-8653	fmitiku@triad.rr.com	HVAC;Furnish heating, ventilating, air condition, plumbing, fixtures, equipment, piping and piping devices	City of Winston-Salem
FRL Cleaning	611 Morrene Avenue	Durham	NC	27705	W	Vilma Forrester	919-383-9482	919-383-9482	919-724-7118	albornozvilma@hotmail.com	commercial and residential cleaning; mowing and landscaping	City of Durham Privilege
GP Supply	501 East Washington Street	Greensboro	NC	27401	M	Antonio Wallace	(336)544-8080		(704)577-3530	awallace@gpsupplycompany.com	Supplier of commercial plumbing and industrisl supplies: pipe, valves, fittings, pumps, solar panels and commercial plumbing fixtures.	
Graymac Electric Supply, Inc.	234 Industrial Way Drive	Kernersville	NC	27284	M	Grady McRae	336-993-3563	336-993-3963		graymacelectric@yahoo.com	electrical supplies	
Hine Sitework, Inc.	PO Box 1275	Goldsboro, NC	NC	27533	W	Ann Hine	919-736-8990	919-736-8886	919-738-2972	ann@hinesitework.com	demolition; grading; paving; concrete; erosion control;clearing&grubbing; water& sewer curb&gutter;storm drainage	NC General Contracting#52225 Unlimited:Higway, PU (Water & Sewer)
Hoggard Electric Co., LLC	PO Box 28	Durham	NC	27702-0028	M	Timothy Hoggard	919-423-8231	919-477-5480	919-423-8231	tim@hoggardelectric.com	Electrical	State of NC License # 25461-L
HomeRun Construction,Inc.	P O Box 1781	Greenville	NC	27834	M	Rosa Burney	252-752-1800	252-752-4344	252-917-2442	rburney@suddenlink.net	general construction; roofing; concrete; paving; HVAC; plumbing; electrical; site work; drywall; painting; demolition	NC General Contractor's License#55248
Honducom Concrete, Inc.	P O Box 14968	Raleigh	NC	27620	H	Ramon Suazo	919-662-0388	919-662-0390	919-796-7148	rsuazo@honducomconcrete.net	concrete construction-commercial, residential and industrial	

SDBE Listings for Construction Services

Hughes Masonry	P O Box 61534	Durham	NC	27715	M	Billy Hughes	919-201-2498		919-201-2498	bhughes.masonry@yahoo.com	masonry; brick; stone work; pressure washing;concrete	City of Durham Privilege License
Hunter and Hunter General Services, LLC	324 W. Glendale Avenue	Charlotte	NC	28120	M	Carlos Hunter	866-935-9499		980-989-8193	hunter_hunterllc@yahoo.com	General Commercial Construction Services; Paint maintenance and repair;commercial and residential building uplifts; commercial and residential landscaping; carpentry; drywall and finishing; metal framing	City of Charlotte; City of Mount Holly
ICORE Service Company, LLC	4216-A Queen Beth Drive	Greensboro	NC	27405	M	Cornelius Lamberth	336-274-2394	336-617-8253	336-362-1646	corneliouslamberth@hotmail.com	Framing, Ceilings, Concrete (Flat), Doors and Hardware	NC General Contractor''s License - Building, Limited
IQ Contracting, LLC	PO Box 6069	Raleigh	NC	27628	H	Robert A. Nunez	919-832-5111	919-832-4111		rnunez@iqcontracting.net	Concrete Construction and Concrete Repair	City of Raleigh Privilege License
J. A. Farrington Industries, Inc.	2403 Fayetteville St.	Durham	NC	27707	M	Edward Boyd	919-808-7988	919-806-8064	919-308-7988	EdBoydJr@JAFarringtonIndustries.com	Janitorial Services and cleaning; landscaping & ground maintenance; irrigation; snow removal	Durham Privilege License
JACS NC, LLC	4724 Hargrove Road, Suite 180	Raleigh	NC	27616	M	John Leaston	919-615-1618	919-615-1619	919-522-3059	jleaston@jacsncllc.com	General Contractor; concrete; framing; roofing; sheetrock; carpentry; excavation and foundation; brick and block work; landscaping	NC General Contractor's License#72909
JAM Construction, LLC	P O Box 16255	Durham	NC	27704	H	Jesus Alvarez	919-724-8469	919-908-6619	919-724-8469	Jam.cons@yahoo.com	sheetrock; painting; flooring; masonry; concrete	City of Durham Business
Johnson Electrical Services	70 Adler Court	Franklinton	NC	27525	M	Brian Johnson	(919)-728-8018		919-457-7277	staywired@yahoo.com	Electrical	NC Electrical Contractor License # 28471-L
Jordan Plumbing and Piping, LLC	811 9th Street,Suite 120 #197	Durham	NC	27572	M	Jeffery Jordan	919-471-6229	919-471-2229	919-600-8741	jordanplumbing@aol.com	plumbing,installationand repairs for commercial/residential	City of Durham Business
Lanier Construction Company, Inc.	1505 Browntown Road	Snow Hill	NC	28580	M	Sherba Lanier	252-747-8124	252-747-4337	252-286-6736	sherba@lanierconstruction.com	Curb & Gutter, Concrete, Grading and Excavation, Road Construcion,clearing and grubbing; General construction; Manhole and Valve box,Bridge and Box culverts	NC General Contractor's License Unlimited Classification: Building; Highway; PU (Water Line & Sewer
Lester and Son Lawn and Cleaning Service,LLC	1306 Clinton Road	Durham	NC	27703	M	Joel Flowers	919-596-2044		919-808-0653	flowej12@yahoo.com	landscaping; lawn maintenance	City of Durham Business
Martinez Company, Inc.	3680 Guess Road	Durham	NC	27705	H	Ketih Brown	919-402-6846	336-282-7600	919-724-2611	luis342@bellsouth.net	demolition; concrete cutting/repair/placement/slabs/sidewalks;waterproofing; grouting; caulking; sealers; sandblasting; pressure washing; erection of prsut; natural stone	NC General Contractor's License#68806 Unlimited Building
Mason Builders, LLC	P O Box 1068	Gaston	NC	27832	M	Bernard Mason	252-535-0993	919-800-3947	252-578-2329	Bernard@masonbuilders.org	building construction; electrical contractor; HVAC construction; masonry; tiling; framing; painting;drywall; flooring; concrete; design/build construction; architectural	NC General Contractor''s License#39316 Unlimited Building; VA Class A Contractor's License#2705
Mayo''s Masonry, Inc.	120 South Hoover Road	Durham	NC	27703	M	Telma Evans; Phillip Mayo	919-806-9116	919-237-3105	919-730-5053	drtelmalyons13@aol.com	Concrete/Masonry/Framing/Hauling	City of Durham Business
McClure and Associates Construction, Inc.	6201 Remington Lake Drive	Raleigh	NC	27616	W	Lesle McClure	919-878-8006	919-878-7992	919-868-3649	Lesle@mcclurebuilders.com	new commercial and residential construction; commercial and residential renovation/rehab; painting; grading; demolition; drywall; concrete; framing; roofing; metal roofing;	NC General Contractors License#42632 Unlimited Building
Nichols and Son Electric, Inc.	5103 Hadrian Drive	Durham	NC	27703	M	Kevnin Nichols	919-740-3458		919-740-3458	k7777nichols@yahoo.com	commercial electrical installation	NC Board of Electrical Contractors License#2245-L
Norlina Grading & Excavating, LLC	P.O. Box 1092	Norlina	NC	27563	W	Wilma Snyder	252-456-2933	252-456-2002	252-432-2112	wilma_snyder@yahoo.com	public utilities-water, sewer, drain, grading; excavating & land clearing	
One Accord Services,LLC	53 Golden Curtis Court	Clayton	NC	27520	M	Monique Young	919-550-6324		919-333-9586	wyoung33@nc.rr.com	general construction; painting; drywall	
Paint Master	14 Pacific Lane	Sanford	NC	27330	M	Larry Harris	(919)776-9251		(919)593-8648	lfharris2003@yahoo.com	Painting and Pressure Washing	
Paintmaster, LLC	4101 Edgement Road	Wendell	NC	27591	W	Debra A. Eberhardt; Bill McNaught	(919)365-3201	(919)365-3202	(919)609-5549	info@paintmasterllc.com	Painting, Wallcovering	
Palmetto Air & Water Balance-Raleigh, Inc.	PO Box 91584	Raleigh	NC	27675	W	Penny Hinton	919-460-7730	919-460-7760	864-303-5723	phinton@palmettoairbalance.com	test, adjust and balance HVAC systems	
Plumbing & Pipe Technologies dba Pipetechs, LLC	1600 Mt. Herman Road	Raleigh	NC	27617	AI	Dale Nichols	919-293-1221	919-293-1234	919-278-8450	pptplumbing@yahoo.com	Plumbing	NC Plumbing,Heating & Fire Sprinkler contractors#15025

SDBE Listings for Construction Services

Production Painting & Decorating, Inc.	8411 Garvey Drive, Sutie 105	Raleigh	NC	27616	M	Keisha Rochelle	919-676-5505, ext. 21	919-847-3993		keisha@productionpaintingonline.com	painting	City of Raleigh Privilege
Pro-Site Services, LLC	P O Box 1491	Durham	NC	27702	M	Ronald Williams	919-730-8110		919-730-8110	ron@prositeservices.net	Concrete, Grading	City of Durham Business License
Ralph Bullock Properties, LLC	806 Bluestone Road	Durham	NC	27713	M	Ralph Bullock	(919)699-9687			rbullock05@nc.rr.com	general construction; highway, water and sewer utilities; Concrete, Demolition,Drywall,metal studs;	
Rasool Electrical and Construction	2612 Elmhurst Circle	Raleigh	NC	27610	M	Muhammad Rafi	919-272-3424	919-896-6588	919-271-4490	rasoolelectricconstruction@gmail.com	electrical and general contracting	North Carolina Electrical Contractor's License#16507-U
RDU Paving, Inc.	5415 Fayetteville Road,Suite B	Raleigh	NC	27603	W	Jeanette Lundholm	919-329-7300	919-329-7301	919-625-2832	sales@rdupaving.com	asphalt grading and paving; new pavement construction/repair; striping; small concrete repair	NC General Contractor's License#62537
Reddrick Masonry	701 Felicia Street	Durham	NC	27704	M	Rueben Redrick	919-477-8297	919-620-0721	919-730-0983	reddrickmasonry@aol.com	hardscape brick paving; concrete; curbs; gutters; masonry; walk ways	City of Durham Privilege
Rescue Restoration Plus, Inc.	6404 Falls of Neuse Road	Raleigh	NC	27615	M	Sheila Brewington	919-615-1760	919-890-5249	919-422-5166	sbrewington@rescuerestorationplus.com	Roofing, general carpentry, painting, exterior renovations & restoration	
Right Build International, Inc.	One Copley Parkway	Morrisville	NC	27560	M	Karl Davis	919-651-8383	919-651-9374		kdavis@rightbuildint.com	construction management; general trades; project management	City of Durham Privilege; NC General Contracting License#70406
RS Construction, LLC	3911 Cassidy Drive	Waxhaw	NC	28173	H	Diana Sarmiento	704-771-3020	704-256-4745	704-771-3688	rchsrm@aol.com	framing; acoustical ceilings; insulation; drywall finishing; sheathing; metal door frames installation; drywall suspension; ceilings; caulking	
Savai Smith Enterprises dba GCS Paint Contractors	903 Pebblestone Drive	Durham	NC	27703	M	Savai Smith	919-672-9819		919-672-9819	gcspaint1@yahoo.com	Personal Development Training and motivational speaking; Painting	City of Durham Business
Scott''s Painting & Drywall, Inc.	238 Emma Jane Road	St. Pauls	NC	28384	AI	Jackie Scott	910-739-8506	9910-739-8516	910-258-4099	spanddinc@yahoo.com	painting;drywall	
Sinclair Contracting, LLC	P O Box 1495	Wake Forest	NC	27587	M	Bridget Wall	919-295-5721	919-400-4630	704-488-3154	bwall@sinclair-llc.com	General Construction; General Contractor; Contracting; Construction Management Services and M/WBE Outreach; painting; flooring; drywall; toilet partitions; toilet accessories	NC General Contractror#72293
Skyrock Construction, LLC	1000-A Old Milburnie Road	Raleigh	NC	27604	M	Nana Manso	919-266-2446	919-266-9096	919-745-7941	nmanso@skyrockconstructionllc.com	concrete; retaining walls; all flat works; concrete construction	NC General Contractor's License#68111
Smart Contracting	1516 Miriam Avenue	Garner	NC	27529	M	Joe Hampton	(919)633-6409	(919)977-1892	(919)633-6409	smartcontractingnc@gmail.com	Doors and Hardware Installation; Toilet Accessories Installation and Finish Carpentry.	
Southern Garden, Inc.	P O Box 808	Apex	NC	27502	W	Connie Joyce	919-362-1050	919-363-9222	919-669-0110	connie@southerngardeninc.com	Landscaping: Landscape Installation/ Maintenance; irrigation, seed & mulch; NC Pest Control Applicator; brick & unit pavers, light masonry; water features; playground equipment; parks; site furnishings & amenities; retaining walls; wetland plantings.	City of Durham Privilege License;NC Landscape Contractor #1049;NC Ground Pesticide Application
Summa General Contractors, LLC	108 Preston Pine Drive	Cary	NC	27513	H	Alphonso J. Vergara	(919)215-8068			summagc@gmail.com	General Contracting; Concrete, Masonry and Drywall	State of NCF General Contractors License # 64373
Summa General Contractors, LLC	108 Preston Pine Drive	Cary	NC	27513	H	Alphonso J. Vergara	(919)215-8068			summagc@gmail.com	General Contracting; Concrete, Masonry and Drywall	State of NCF General Contractors License # 64373
Sure Power Electric, Inc.	7810 Grand Lillie Drive	Durham	NC	27712	M	Justin E. Jenkins	(919)452-2370	(919)479-1052		justinejenkins2003@yahoo.com	Electrical	City of Durham Business License, City of Raleigh Business License, NC Electrical Contractors Lic. 25
Taylors Construction Co.	2915 Beechwood Drive	Durham	NC	27704	M	Vince Taylor	(919) 806-6100	(919) 246-4153	(919) 806-6100	taylorsconstruction@gmail.com	Carpentry, Demolition and Painting	

SDBE Listings for Construction Services

The Daniele Company, LLC	P. O. Box 1228	Durham	NC	27702	M	Gloria Shealey	919-682-6700	919-682-6711		gcshealey@thedanieleco.com	General Contracting, Construction Management, Electrical Supply	NC General Contractor''s License - Building, Limited #57878
Toledo Construction, Inc.	PO Box 13882	Durham	NC	27709	H	Esequil Toledo	(919)422-4749	(919)381-5676		toledoconstruction@yahoo.com	Drywall; Siding, Painting	City of Durham Privilege
Toro's Painting	4931 Howe Street, Lot#1	Durham	NC	27705	H	Toribio Puente Sepulveda	919-369-3787		919-369-3787	toros_painting@yahoo.com	painting; sheetrock; power washing	City of Durham Business
Triangle Landscape Supplies of J.C. LLC	6300 Cornwallis Road	Garner	NC	27529	W	Stacey Mangum	919-553-1118	919-553-7161	919-274-2661	slmangum@nc.rr.com	Supplier of Landscaping Supplies	Town of Garner
Tropical Painting & General Construction	6127 Yellowstone Drive	Durham	NC	27713	H	MIchael Almestica	919-247-9228	919-381-4644	919-247-9228	Tropicalpaintin@gmail.com	painting; cabinetry;resurfacing; gypsum board; framing	City of Durham Business
U & L Contractors,LLC	5621 Departure Drive	Raleigh	NC	27616	H	Donna Aguilar	919-427-4055		919-427-4055	admin@uandlcontractorsllc.com	construction; masonry contractor	City of Raleigh Business
Vistabution,LLC	8315 Six Forks Road,Suite 205	Raleigh	NC	27615	M	Clarence Mann	919-844-9375	919-861-0849		cmann45@bellsouth.net; Aangela@vistabution.com	BMP Stormwater Mgmt.;Demolition,Asbestos Inspection,Design & batement;Grading& Excavation;Environmental & Mold Remediation;	
W. E. Garrison Company, Inc.	5820 Fayetteville Rd.	Raleigh	NC	27603	W	Colleen B. Garrison	919-772-4144	919-772-4860	919-306-6158	colleeng@wegarrison.com	Hauling; Clearing; Grading; Concrete Curb & Gutter & Flatwork; Field Engineering; Demolition; Grubbing; Storm Drainage	NC Professional Engineering License #3503
Yto Eta Solutions	476 Gons Road	Pembroke	NC	28372	AI	Sanford Locklear	910-773-7636		910-773-7636	sanfordlocklear@gmail.com	acoustical tile ceilings; drywall, metal framing; insulation; painting	

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Appendix C – Insurance Requirements

Firm/Team shall maintain insurance not less than the following:

Consultant agrees to maintain, on a primary basis and at it sole expense, at all times during the life of this Contract the following coverage and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Contract.

7. Lead Design-Build firm must obtain a Builder's Risk Insurance Policy for this project with coverage equal to the total cost of the project.
8. Lead Design-Build firm must keep and maintain insurance for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below. (The Owner reserves the right to negotiate different limits and coverage in the final contract.)

Commercial General Liability:	$1,000,000 per occurrence
Commercial Auto Liability:	$1,000,000 combined single limit
Excess (Umbrella) Liability:	$1,000,000
Workers' Compensation:	Statutory
Employer's Liability:	$1,000,000 each accident/total disease/employee disease

9. Professional Liability (Errors & Omissions) coverage for Architect of Record and Engineer(s) of Record shall provide coverage not less than $1 million per claim. (The Owner reserves the right to negotiate different limits and coverage in the final contract.)
10. Additional Insured- Consultant agrees to endorse the City of Durham as an additional Insured on the Professional Liability coverage.
11. All insurance companies must be authorized to do business in North Carolina with a Best rating A-VIII or higher.

Certificate of Insurance- Consultant agrees to provide the City of Durham with Certificates of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Consultant's insurer. If Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to the coverage no longer in compliance. Certificate Holder address should read:

City of Durham
Attn: General Services Department
101 City Hall Plaza
Durham, NC 27701

Appendix D – Safety Evaluation Questionnaire

SAFETY EVALUATION QUESTIONAIRE-
CONTRACTOR SAFETY RECORD INFORMATION

The Design-Build Team's safety record shall be reviewed and evaluated in addition to other quality and performance criteria as part of bid evaluation process. Failure to provide the requested information and documentation may result in rejection of your bid as non-responsive. Accordingly, all bidders must submit the following information regarding their safety record.

The following definitions shall apply to this section:

"DART incident rate" – Acronym for "Days Away, Restrictions and Transfers". The DART incident rate may be used to show the relative level of injuries and illnesses within a firm compared to the industry. It is based only on those injuries and illnesses severe enough to warrant "Days Away, Restrictions and Transfers".
The DART incident rate is calculated using OSHA's Form 300 and the following formula:
((Number of entries in column H (days away from work) + column I (job transfer or restriction) x 200,000) / (Number of hours worked by all employees) = DART Incident rate.

"EMR" – Acronym for "Experience Modification Rate," is an indicator of a contractor's past safety performance, widely used by the insurance industry as an equitable means of determining premiums for workers' compensation insurance. The rating system considers the average workers' compensation losses for a given firm's type of work and amount of payroll and predicts the dollar amount of expected losses to be paid by that employer in a designated rating period, usually three years. The rating is based on comparison of firms doing similar types of work, and the employer is rated against the average expected performance in each work classification. Losses incurred by the employer for the rating period are then compared to the expected losses to develop an experience rating.

"OSHA" – Acronym for the Federal Occupational Health and Safety Administration. The term "OSHA" as used in this Policy also refers to any state or local agency having jurisdictional authorization to enforce worker safety requirements and assess fines or warnings for violation of worker safety standards.

1. OSHA DART Incident Rate. Provide the bidder's DART Incident Rate calculated from OSHA's Form 300 for the last three years and the other required information shown in the example table below. *The bidder must attach all supporting documentation and calculations including certified OSHA forms*.

YEAR	CONTRACTOR **DART** INCIDENT RATE	INDUSTRY **DART** INCIDENT RATE	INDUSTRY FIELD AND CODE

2. Experience Modification Rate (EMR). Provide the bidder's most recent Experience Modification Rate (EMR) based on insurance claims history. *The bidder must provide the source of the EMR information and contact information of insurer entity providing the EMR*. *A builder with an ERM greater than 1.0 must provide a written explanation of their current safety program and safety training initiatives directed toward minimizing future work related injuries."*

YEAR	CONTRACTOR **EMR**	INDUSTRY FIELD AND CODE	NAME AND CONTACT INFO FOR **EMR** INFORMATION

3. Answer the following OSHA Specific Questions:

(a) Within the last 2 years, has the bidder received any citations classified by OSHA as being (1) serious, (2) willful and/or (3) repeat violations where your company operates?
Yes _____ No _____
If yes, attach a copy of each such citation and violation.

(b) Has the bidder experienced any work-related fatalities within the last five years?
Yes _____ No _____

(c) Has the bidder had any citations issued by OSHA as a result of work related fatalities within the past 5 years?
Yes _____ No _____

(d) Is the bidder under investigation for any work-related fatalities?
Yes _____ No _____

(e) If your answer is "yes" to 3(b), (c) or (d), provide a copy of the citation(s), list of number(s) of fatalities and documented explanation of the fatality.

4. Safety Plan:

(a) Does the company have a written safety program that includes responsibility for all aspects of safety management?
Yes_____ No _____

(b) Does the company have a written plan for safety training of new employees and ongoing training of existing employees?
Yes_____ No _____

(c) Does the company have documented evidence of safety training that they have conducted?
Yes_____ No _____

(d) If the company has employees with limited English ability, does the company have a written plan for ensuring that their employees understand the training they are being given?
Yes_____ No _____

(e) Do all supervisors have an appropriate documented level of OSHA training (e.g., a minimum of 30 hour OSHA construction safety training)?
Yes_____ No _____

(f) Do employees have documented basic OSHA 10 hour construction safety training?
Yes_____ No _____

(g) Does the company have a documented Hazard Communication Program?
Yes_____ No _____

5. Required Written Explanation of Safety Record. If the bidder has any of the following:

(a) DART incident rate greater than its industry average,
(b) an EMR greater than 1.0,
(c) answered "yes" to any of the OSHA Specific Question above, or
(d) answered "no" to any of the Safety Plan questions,

then the bidder shall provide the City, in its bid, a detailed written explanation of its safety record and the reasons why such safety history is NOT representative of its future performance and what specific actions it has taken to improve its overall safety record. Failure to provide a written explanation of its safety record pursuant to this paragraph may be deemed as non-responsive by the City.

Appendix E – Non-Collusion Form

NON-COLLUSION AFFIDAVIT

By executing this bid, I certify that this bid is submitted to the City of Durham competitively and without collusion. I am authorized to represent the bidder both in submitting this bid and in making this Non-collusion Affidavit. To the best of my knowledge and belief, (1) the bidder has not violated N. C. General Statute section 133-24 in connection with the bid, (2) the bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its bid, and (3) the bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor. In this Non-collusion Affidavit, "bid" includes bids and proposals, and "bidder" includes bidder and proposer. The neuter includes the masculine and the feminine. The bidder to which this Non-Collusion Affidavit refers is:

_____.
(Insert name of Consultant)

_____
(Signature of individual authorized by Corporation)

State of _____ ACKNOWLEDGMENT

County of _____

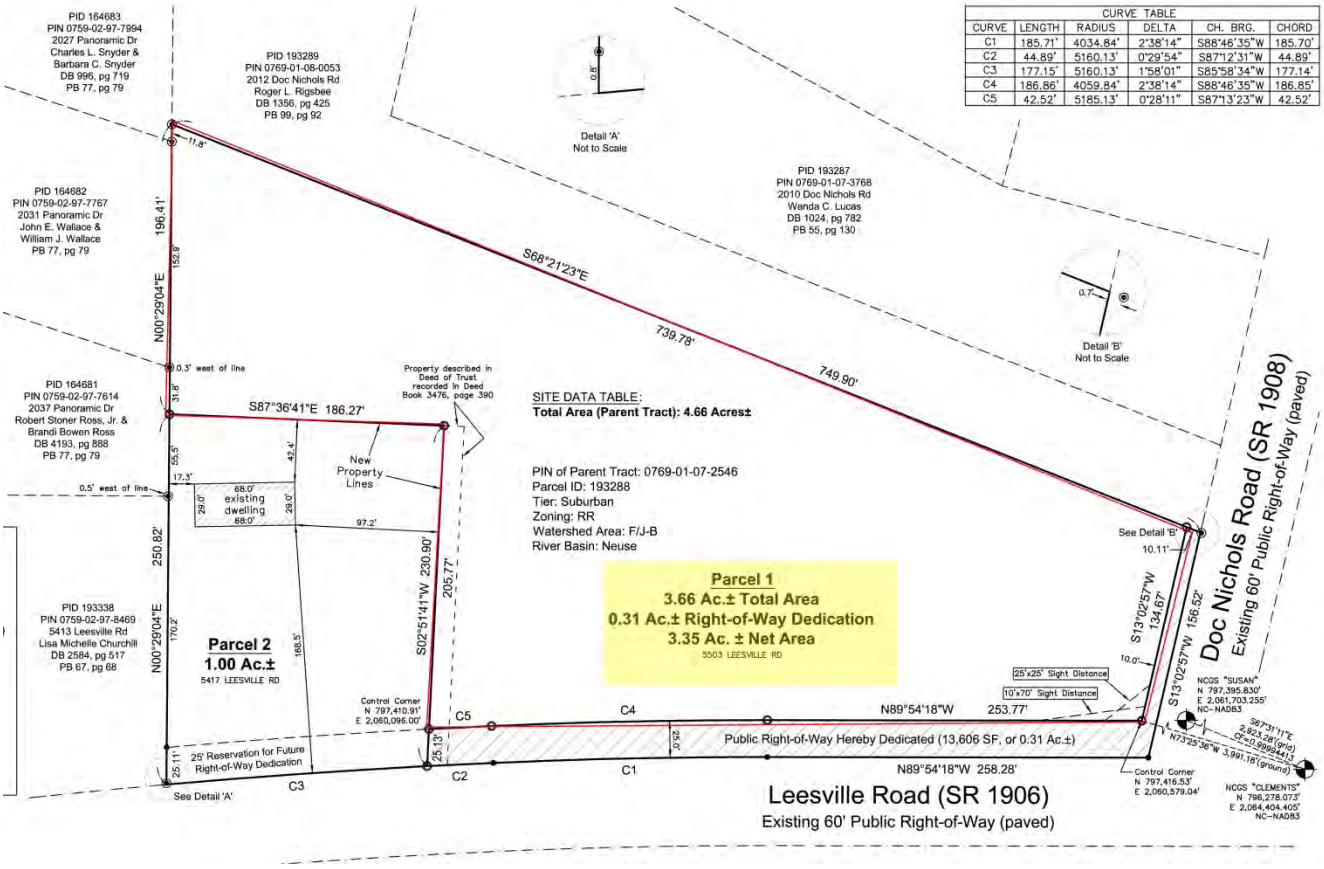
I, a notary public in and for the aforesaid county and state, certify that

_____

_____ personally appeared before me this day and having been duly sworn, stated that the contents of the foregoing Non-collusion Affidavit are true to the best of his or her knowledge and belief, and he or she acknowledged the execution of the foregoing Non-collusion Affidavit in connection with the bidder named above. This, the _____ day of _____, 20_____.

My commission expires: _____

APPENDIX F – SITE INFORMATION

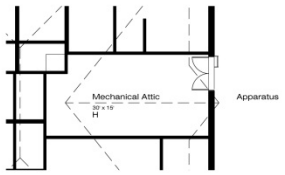


APPENDIX G – SCHEMATIC PROTOTYPE BUILDING
FLOOR PLAN

SYM	FLOOR	BASE	WALLS	CEILING	REMARKS
A	TERRAZZO	TERRAZZO	GYP. BD. PAINT/ STOREFRONT	A.C.T. 1	
B	TERRAZZO	TERRAZZO	PAINTED	A.C.T. 1	WALL PROTECTION TO 30-INCHES A.F.F. IN BEDROOMS
C	TERRAZZO	TERRAZZO	W.B. EPOXY PAINT	A.C.T. 1	
D	TERRAZZO	TERRAZZO	W.B. EPOXY PAINT	A.C.T. 2/GYP BD	PORCELAIN FLOOR & CERAMIC WALL TILE IN SHOWER GYP. BD. CLG. PAINTED IN SHOWER
E	SEALED CONC.	RUBBER	PAINTED	GYP. BD. PAINT	
F	RUBBER	RUBBER	PAINTED	A.C.T. 1	WOOD CHAIR RAIL AT 40" A.F.F. CARPET WAINSCOT BELOW CHAIR RAIL
G	HIGH BUILD EPOXY	RUBBER	PAINTED	GYP. BD. PAINT	
H	SEALED CONC.	NONE	PAINTED	GYP. BD. PAINT	

NTS

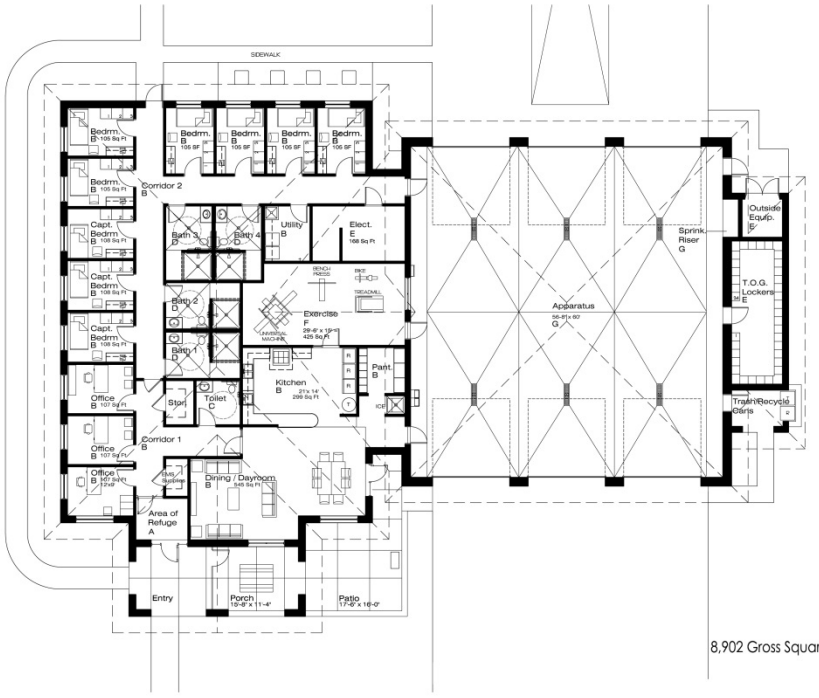
Finish Schedule 4



438 Gross Square Feet

1/8" = 1'-0"

Mechanical Attic 17



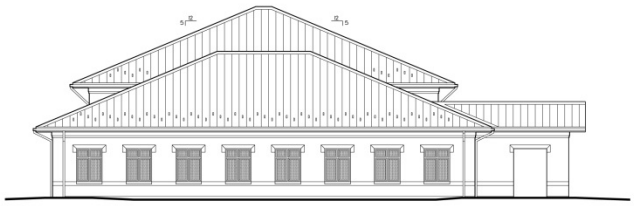
8,902 Gross Square Feet

1/8" = 1'-0"

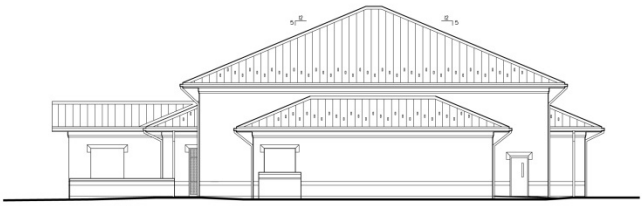
Floor Plan 1

APPENDIX H – SCHEMATIC PROTOTYPE BUILDING
EXTERIOR ELEVATIONS

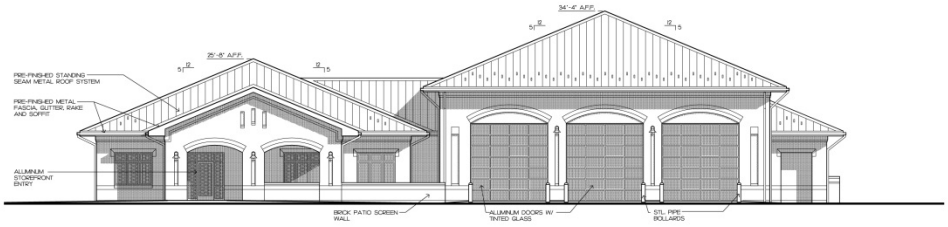
Rear Elevation 4



Side Elevation 10



Side Elevation 2



Front Elevation 1

Appendix I – Sample Form of Contract

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TEMPLATE AIA® Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

Editing Template
CAUTION: Do not remove or otherwise edit Project Data fill-point (Basic Information, Contract Details and Project Team) when using this document

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

and the Design-Builder:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

« »
« »
« »

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 COMPENSATION AND PROGRESS PAYMENTS

3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

6 CHANGES IN THE WORK

7 OWNER'S RESPONSIBILITIES

8 TIME

9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 UNCOVERING AND CORRECTION OF WORK

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14 CLAIMS AND DISPUTE RESOLUTION

15 MISCELLANEOUS PROVISIONS

16 SCOPE OF THE AGREEMENT

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A DESIGN-BUILD AMENDMENT

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1; other documents listed in and incorporated into this Agreement; and Modifications issued after execution of this Agreement.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

« »

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§ 1.1.2 The Owner's design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« *[insert all known and required specs, plans, drawings and details for the Project here]* »

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™–2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:
(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

« »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« »

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« »

.2 Submission of Design-Builder Proposal:

« »

.3 Phased completion dates:

« »

.4 Substantial Completion date:

« »

.5 Other milestone dates:

« »

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§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

.1 Architect

« »

.2 Consultants

« »

.3 Contractors

« »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

« »
« »
« »
« »
« »
« »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

« »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

« »

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§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

« »
« »
« »
« »
« »
« »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 ~~Binding Dispute Resolution~~ *[Intentionally Deleted]*
~~For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:~~
~~*(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*~~

~~[« »] Arbitration pursuant to Section 14.4~~

~~[« »] Litigation in a court of competent jurisdiction~~

~~[« »] Other: *(Specify)*~~

~~« »~~

§ 1.4 Definitions
§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective employment or agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

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§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information meeting the definition of confidential pursuant to N.C.G.S. § 132-1.2, as amended, and that is clearly marked as "confidential." or as "trade secret".

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 Final Completion. Final Completion means the completion of all Work required by, and in strict compliance with, the Design-Build Documents, including start up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations necessary to operate and maintain the Project.

§ 1.4.17 Site. The term "Site" or "Project site" refers to that portion of the property on which the Work is to be performed or which has been otherwise designated for use by the Design-Builder.

§ 1.4.18 Persistently fails. The expression "persistently fails" and other similar expressions, as used in reference to the Design-Builder, shall mean any act or omission which causes the Owner to reasonably conclude that the Design-Builder will not complete the Work within the Contract Time, for the Contract Sum, or in substantial compliance with the requirements of the Design-Build Documents.

§ 1.4.19 Approved, Satisfactory or as Directed. When the words "approved," "satisfactory," "proper" or 'as directed' are used, this refers to approval, satisfaction, determination, or direction by the Owner, unless the context otherwise requires.

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§ 1.4.20 Provide. The word "provide" and its forms and derivatives means to properly fabricate, complete, transport. deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

§ 1.4.21 Knowledge, Recognize, and Discover. "Knowledge," "recognize," and "discover," their respective forms and derivatives, and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall mean that which the Design-Builder knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence required by the Design-Build Documents. The expression 'reasonably inferable" and similar terms in the Design-Build Documents shall mean reasonably inferable by a design-builder familiar with the Project and exercising the care, skill and diligence required of the Design-Builder by the Design-Build Documents.

§ 1.4.22 Construction Documents. All design and construction documents, including but not limited to, drawings, specifications, engineering reports, site assessments and other related project documentation necessary and, in a form sufficiently complete, that such Construction Documents could be reasonably relied upon by a prudent general contractor having experience constructing similar projects, would satisfactorily complete the Project pursuant to a traditional design-bid-build method of construction.

§ 1.4.23 Subcontractor. The term "subcontractors" refers to any person(s) or legal entity with which the Design-Builder contracts directly for any of the Work to be performed under this Contract. Unless the context suggests otherwise, the term subcontractors shall include the Architect, Consultant, and Contractor.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:
(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

« »

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Individual or Position	Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, standard form documents;
.5 Postage, handling and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
.8 All taxes levied on professional services and on reimbursable expenses; and
.9 Other Project-related expenditures, if authorized in advance by the Owner.

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§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of « » percent (« » %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable ~~upon presentation of the Design-Builder's invoice. Amounts unpaid~~ « Thirty » (« 30 ») days from the date the Design-Builder's ~~after the~~ invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear simple interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the place where the Project is located.~~date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder~~.

(Insert rate of monthly or annual interest agreed upon.)

« 8.00 » % « per annum »

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with all applicable laws, statutes, ordinances, codes, rules, ~~and~~ regulations~~, or~~, and lawful orders of public authorities, including but not limited to all immigration, environmental and safety laws, statutes, rules, codes orders and regulations. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act ~~which they believe~~ that ~~will~~ is a ~~violate~~ violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. ~~Upon verification by the~~If Owner agrees that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

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§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

.1 Work completed for the period;
.2 Project schedule status;
.3 Submittal schedule and status report, including a summary of outstanding Submittals;
.4 Responses to requests for information to be provided by the Owner;
.5 Approved Change Orders and Change Directives;
.6 Pending Change Order and Change Directive status reports;
.7 Tests and inspection reports;
.8 Status report of Work rejected by the Owner;
.9 Status of Claims previously submitted in accordance with Article 14;
.10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
.11 Current Project cash-flow and forecast reports; and
.12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

.1 Design-Builder's work force report;
.2 Equipment utilization report; and
.3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's ~~information a schedule~~ approval a Project Schedule (Critical Path Method or "CPM Schedule") for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The approval of any CPM Schedule by the Owner shall not relieve the Design-Builder of its sole responsibility to complete the Project within the Contract Time.

.1 The CPM Schedule shall be a critical path method ("CPM") schedule created and maintained on an accepted standard computer program.
.2 The CPM Schedule to be prepared and submitted to the Owner shall consist of a CPM network (diagram of activities) and a computer-generated print out as specified herein. The format shall be the activity on node precedence network.
.3 The network shall show the order and inter-dependence of activities and the sequence in which the work is to be accomplished. At a minimum the network diagram must demonstrate how the start of a given activity is dependent on the completion of preceding activities and how its completion restricts the start of following activities.
.4 The network will separately identify all design and construction activities with durations in excess of ten (10) days and the submittal and approval of all design and construction documents, materials and shop drawings and the procurement of equipment and materials.

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.5 The CPM schedule shall include tasks and activities that are the responsibility of the Owner. The Design-Builder shall promptly notify the Owner if a delay in any such task or activity will delay construction.

.6 All activities shall be grouped by sub-project.

.7 The Design-Builder shall not use a scheduler without the approval of the Owner. Approval of the scheduler shall not be unreasonably withheld.

§ 3.1.9.1.1 The CPM Schedule shall contain milestone or completion dates consistent with the Contract requirements and shall clearly identify the critical path.

.1 The milestone and completion dates indicated are considered essential to the timely completion of the Work, the satisfactory performance under this Contract and for the coordination of all Work on the Project. The milestone dates listed are not intended to be a complete listing of all Work under this Contract or of all interfaces with other Project contractors.

.2 The milestone dates listed represent the latest allowable completion dates. Earlier milestones completion dates, including the contractual completion date for the Project, may be established by the Design-Builder in the baseline schedule, but the Owner shall not be liable to the Design-Builder or any subcontractors for any costs or other damages should the Design-Builder or any subcontractors be unable to complete the Work before such early milestone or completion dates regardless of cause.

.3 The duties, obligations and warranties of the Owner to the Design-Builder shall be consistent with and applicable only to the completion of the Work on the milestone and completion dates required in the Contract Documents, unless such earlier dates are agreed to by Change Order.

.4 The Owner shall give the Design-Builder a written notice to proceed stating the date on which Work is to commence. This notice shall also state the date of substantial completion. The Design-Builder shall submit a preliminary CPM schedule for inclusion in the subcontractor contract requirements consistent with the timeframes for the Project.

.5 Within thirty (30) days of the notice to proceed, the Design-Builder shall obtain from the subcontractors their respective Work activities and integrate them into a Project construction schedule. The Design-Builder shall develop a complete CPM schedule in the form of a CPM network arrow diagram using the Design-Builder's logic and time estimates for each segment of the Work and shall be cost loaded, the sum of which totals the Contract Sum exclusive of a construction contingency, and manpower loaded to complete the Work within the scheduled time frames. The scheduling obligation shall include tracking the progress of the Owner's tasks and activities in relation to the milestone schedule and promptly notifying Owner of any delay that might impact construction. The Design-Builder shall make recommendations to the Owner regarding strategies for overcoming any delay in the design of the Project that will affect the construction schedule. The Design-Builder shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the Work. The Design-Builder shall prepare drawings or clarifications in accordance with that schedule and shall not proceed with the Work without such detail drawings and/or written clarifications.

.6 The arrow network diagram will be drawn in a level of detail suitable for display of salient features of the Work, including but not limited to the placing of orders for materials, submission of shop drawings for approval, approval of shop drawings by the Owner, delivery of material, and all Work activities including the Punch List agreed to by the Owner. Each Work activity shall be assigned a time estimate by the Design-Builder. One-day shall be the smallest time unit used. Data shall also be provided in Gantt form. This cost loaded schedule will not be the basis for invoicing, but may be considered by the Owner when evaluating the percentage of Work represented to be complete in each schedule of values.

.7 Upon completion of the network diagrams, the Design-Builder shall have computer input data prepared, and a computer run made to generate a printout for the Project based on the information supplied. In the event the completion date indicated by the schedule exceeds the substantial completion date, the logic and time estimates used to develop the plan will be reviewed, changes made in the logic and time estimates, and another computer run made to generate a new schedule. This procedure shall be repeated, if necessary, to provide a plan and schedule to meet Owner requirements. All submissions shall be both in hard copy and in electronic format.

.8 Within fifteen (15) days of the notice to proceed, the updated CPM schedule shall be submitted to the Owner for review and approval. No application for payment will be processed until the Project CPM

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schedule is approved by the Owner. This working plan shall show job identification, job duration, manpower loading, cost loading, calendar dates for start and finish of each job, and jobs critical to the completion of the Project on schedule. When approved by the Owner, this information shall become the working plan and schedule for the Project and such information shall be provided to the Design-Builder for distribution. The Design-Builder shall distribute to the subcontractors the approved Project CPM schedule and shall display same at the job site.

.9 The Design-Builder shall review the plan and schedule each week. An updated cost loading Project schedule shall be furnished showing actual completed Work at the end of each month in respect to the entire Project. The form used shall be approved by the Owner and shall be submitted with the monthly invoice. The Design-Builder shall also develop and submit a Work plan for a two week, thirty day and sixty day look ahead.

.10 The Design-Builder must also submit with each Application for Payment a computer-generated list of all changes to the activities, their duration, and logic from the previous schedule.

.11 The Design-Builder shall provide regular monitoring of the schedule as design and construction progresses, identify potential variances between scheduled and desired completion dates, review the schedule for Work not started or incomplete, review the status of submittals and delivery of long-lead time deliveries, review the Owner's occupancy priorities, and take the action necessary to meet the required completion date. The Design-Builder shall furnish to the Owner various schedules and updates setting forth planned and completed progress of the Project broken down by the various divisions or parts of the Work and by calendar days. The Design-Builder shall ensure that all schedules are prepared and updated in strict conformance with the Owner's requirements for formatting of reports for the Owner. The Design-Builder shall keep the Owner and all subcontractors fully informed as to all changes and updates to the schedule. The Design-Builder shall ensure that all schedules are prepared and updated in strict conformance with the Owner's requirements and for provision of one inclusive schedule incorporating necessary lead times for actions required, by the Owner and regulatory agencies (including the City of Durham), by the Design-Builder, and by utility companies providing services or locating service lines and facilities, by all subcontractors, and for significant general conditions' activities, including but not limited to agenda submittals, permit and approvals applications and review of interim and final plans, specifications and bid packages.

.12 The Design-Builder shall submit to the Owner a written monthly report of the status of all Work activities. The monthly status report shall show the actual Work completed to date in comparison with the original amount of Work scheduled. If the Work is behind schedule, the Design-Builder must indicate in writing what measures are being taken to bring the Work back on schedule and ensure that the Contract completion date is not exceeded. If the Work is greater than fourteen (14) days behind schedule, then the Design-Builder shall prepare and submit to the Owner a recovery schedule for review and approval.

.13 The schedule and all updates to the schedule shall represent a practical plan to complete the Work by the date of substantial completion. Extension of any schedule shall not be acceptable. Schedules showing the Work completed in less than the contract time may be acceptable if judged by the Owner's Representative to be practical. However, acceptance of such a schedule shall not change the date of substantial completion or constitute acceleration resulting in any additional costs to the Owner for the Work, general conditions or fees. The date of substantial completion, not the contract schedule, shall control in the determination of liquidated damages payable by Design-Builder and in the determination of any delay.

.14 Owner's Representative's acceptance of or its review comments about any schedule or scheduling data shall not relieve Design-Builder from its sole responsibility to plan for, perform, and complete the Work within the contract time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule to the Owner nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule.

.15 Failure of Owner's Representative to discover errors or omissions in schedules that it has reviewed, or to inform Design-Builder that Design-Builder, subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the schedule shall not relieve Design-Builder from its sole responsibility to perform and complete the Work on time and shall not be a cause for an adjustment of the contract time or the Contract Sum.

.16 Design-Builder shall perform the Work in accordance with the current accepted schedule.

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.17 The Work shall start upon the date given in the notice to proceed issued by the Owner or the date of the Agreement, whichever is later. The Design-Builder shall complete all the Work necessary, including but not limited to substantial completion, close-out, testing and demonstration of all systems as required for acceptance, punchlists, training and submission of record documents, manuals, guarantees and warranties.

.18 Time is of the essence with respect to the Work. By executing the Agreement, the Design-Builder confirms and agrees that the days for substantial completion are reasonable period to perform the Work. The Design-Builder shall proceed expeditiously with adequate forces and shall achieve substantial completion on time. The Design-Builder may, at its discretion, plan to complete the work and achieve substantial completion in less time.

§ 3.1.9.1.2 The Design-Builder shall monitor and update the CPM Schedule as construction progresses and submit a copy of the approved CPM Schedule updated by actual progress in activities with each Application for Payment.

.1 The CPM Schedule submitted with each Application for Payment should accurately reflect the progress of the work up through and including two (2) business days prior to the date of the Application for Payment.

§ 3.1.9.1.3 The CPM Schedule shall allow for the integration of all aspects of the Project and provide for the coordination of all Work.

§ 3.1.9.1.4 The Design-Builder shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Design-Builder's construction schedule and allows the Owner reasonable time to review submittals.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. ~~The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in~~

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~~writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation.~~ The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.11.6 (Certification of performance criteria) When professional certification of performance criteria of materials, systems, or equipment is required by the Design-Build Documents, the Design-Builder shall provide the person providing the certification with full information on the relevant performance requirements and on the materials, systems, and equipment that are expected to operate at the Site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the Site. The Owner shall be entitled to rely upon the accuracy and completeness of such certificates.

§ 3.1.12 Warranty. The Design-Builder makes the following representations and warranties in order to induce the Owner to execute this Contract. The Design-Builder recognizes that, in making these representations and warranties, Owner is entitled to rely upon the Design-Builder's representations and warranties and is relying upon them in entering into this Contract. The Design-Builder, by executing this Agreement, makes the following express representations and warranties to the Owner:

.1 The Design-Builder is fully qualified to act as the Design-Builder and perform the Work for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Design-Builder for, and to construct, the Work for the Project.

.2 The Design-Builder has become familiar with the Project site, the local conditions under which the Project is to be constructed and operated and its surrounding territory and is informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over, or under the site and that its information was secured by personal and other investigation and research.

.3 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects~~, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents~~. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

.4 The Design-Builder has received, reviewed and carefully examined all of the documents which make up this Contract and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction of the Work for the Project. Design-Builder is responsible for performing Work shown on the Design-Build Documents, including reasonably implied or inferred Work from the Design-Build Documents, which a reasonably prudent Design-Build Design-Builder of Design-Builder's reputation, expertise and experience would conclude were inferable from the Design-Build Documents. The Design-Builder is obligated to conduct a careful and thorough pre-Bid. review of all of the Design-Build Documents and to inform the Owner prior to execution of the Design-Build Amendment of any errors, omissions, or conflicts or other issues in the Design-Build Documents which will either increase the Contract Sum or extend the Contract Time. Design-Builder's performance with respect to its review of the Design-Build Documents shall be that of an experienced Design-Build Design-Builder performing work of a similar nature in the locale of the Project. Design- Builder will not be compensated for the performance of any additional or change order work or for any delays or cumulative impact, lost efficiency, or lost productivity arising from

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any errors, omissions or conflicts or other issues in Design-Build Documents which Design-Build Design-Builder or a reasonably prudent Design-Build Design-Builder of Design-Builder's reputation, expertise and experience should have discovered as a result of such review.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights or violation with respect to copyrights, trade secrets, or other proprietary information and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent trade secret or other proprietary right, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, trade secret, or other proprietary right, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1

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

(b) Definitions. As used in subsections 'a' above and 'c' and 'd' below -- 'Charges' means third-party claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (included within 'Charges' are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution or other environmental or pollution laws and regulations -- including any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items or materials that are involved in performance of the Work).

'Indemnitees' means the City of Durham and its officers, officials and employees, and its officers and employees, but does not include the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them.

(c) Limitations of the Design-Builder's Obligation. Neither Subsection 'a' of this Section 3.1.14.1 nor any other provision of the Contract shall be construed to require the Design-Builder to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(d) Nothing in subsections 'a', 'b', or 'c' in this Section 3.1.14.1 shall affect any warranties in favor of the Owner. This Section 3.1.14.1 is in addition to and shall be construed separately from any other indemnification provisions that may be in this Design-Builder.

(e) Survival. This Section 3.1.14 shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Design-Builder under this Contract.~~To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.~~

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

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§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1.The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

.1 allocations of program functions, detailing each function and their square foot areas;

.2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;

.3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and

.4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

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§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

.1 Confirmation of the allocations of program functions;
.2 Site plan;
.3 Building plans, sections and elevations;
.4 Structural system;
.5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
.6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. If the Preliminary Design is not acceptable to the Owner, the Owner shall provide in writing to the Design-Builder comments requesting modification(s) to the Preliminary Design. The Design-Builder shall re-submit the Preliminary Design as many times as necessary to reasonably satisfy the concerns and comments of the Owner. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

.1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
.2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
.3 The proposed date the Design-Builder shall achieve Substantial Completion;
.4 An enumeration of any qualifications and exclusions, if applicable;
.5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
.6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement. It is the intent of the Owner to accept a reasonable proposal which purports to deliver the Project within the Owner's established budget and delivery schedule for the Project. Notwithstanding the foregoing, the Owner may terminate this agreement after receiving the Design-Builder's Proposal for any reason pursuant to Section 13.1.5.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

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§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's ~~information~~approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall ~~promptly~~ notify the Design-Builder of such deviations and objections in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The Design-Builder shall address the Owner's objections to the Design Construction Documents before commencement of any Work, expect as permitted in Section 5.2.2. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 ~~Unless otherwise provided in the Design-Build Documents, t~~The Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with ~~and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work~~ all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including but not limited to all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations. ~~.~~

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those

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ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14. As a condition precedent to the Owner having any liability to the Design-Builder due to concealed and unknown conditions, the Design-Builder must give the Owner (including the City of Durham) written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Design-Builder to give the written notice and make the claim as provided in Article 14 shall constitute a waiver by the Design-Builder of any rights arising out of or relating to such concealed and unknown condition.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

.1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

§ 5.9.1 The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.2 (*Storage of materials and equipment*) The Design-Builder shall not store any materials or equipment on the Site except those which are to be used directly in the Work. After equipment is no longer required for the Work, the Design-Builder shall promptly remove it from the Site. The Design-Builder shall provide suitable protection of materials and equipment stored at the Site from adversity of the kinds that may be reasonably expected, and from weather, theft, and other damage.

§ 5.9.3 (*Signs*) Neither the Design-Builder nor the Architect, Consultants, Contractor or any of its subcontractors may erect any sign on the Site without the prior written consent of the Owner. That consent may be withheld in the sole discretion of the Owner.

§ 5.9.4 (*Design-Builder's use of Owner's facilities; insurance requirements*) The Design-Builder shall not permit any workers to use any existing facilities at the Site, including lavatories, toilets, entrances, and parking areas, other than those designated by the Owner. Without limitation of any other provision of the Design-Build Documents, if the Owner is using or occupying areas adjacent to the Work, the Design-Builder shall comply with all regulations promulgated by the Owner in connection with the use and occupancy thereof, as amended from time to time. The Design-Builder shall immediately give notice to the Owner if during the performance of the Work, the Design-Builder finds compliance with any portion of such regulations to be impracticable, setting forth the problems of such compliance. The Owner shall use reasonable efforts to accommodate the Design-Builder's concerns, if in the Owner's discretion it is reasonably practical to do so. The Design-Builder shall also comply with all insurance requirements applicable to use and occupancy of the Site.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove

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waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents. Except as permitted in Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, none of the following shall be grounds for any increase in the Contract Sum or in the Contract Time: (a) course of conduct or dealings between the parties; (b) express or implied acceptance of alterations or additions to the Work; or (c) any unjust enrichment accruing to the Owner by any alteration or addition to the Work.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 The Owner, unilaterally at any time may have changes made in the Work covered by the Contract, including but not limited to changes: (1) in the specifications or drawings; (2) in the sequence, method or manner of performance of the Work; (3) in the Owner-furnished facilities, equipment, materials, services or site; or (4) directing acceleration in the performance of the Work. Furthermore, it is understood and agreed that refinement and detailing may be accomplished from time to time with respect to the drawings and specifications. The Design-Builder's entitlement to an increase in the Contract Sum or an extension of time, or both, if any, for such changes shall be determined in accordance with this Contract.~~Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.~~

§ 6.1.4 The Owner may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Construction Change Directive, without invalidating the Contract, and without notice to Surety. Absence of such notice shall not relieve such surety(s) of any of its obligations to the Owner. The Design-Builder shall notify the Surety of any such changes.

§ 6.1.5 The Owner's Authorized Representative has the authority to order minor changes in the Work not involving an adjustment in the Contract Sum or time for completion, and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Owner and the Design-Builder. The Design-Builder shall not perform any changes in the Work unless authorized in writing by the Owner. The Design-Builder's performance of minor changes pursuant to this section shall not constitute a waiver of any claim the Design-Builder may have for additional compensation or time. Any claim the Design-Builder may have, however, shall be filed in strict conformance with this Contract.

§ 6.1.6 *[Intentionally omitted]*

§ 6.1.7 Except in an emergency endangering life or property, no change shall be made by the Design-Builder except upon receipt of approved change order or written Change Directive from the Owner. No claim for increases in the Contract Sum shall be honored or valid unless this procedure is followed. A Change Directive, transmitted by fax or hand-delivered, may be used where the change involved impacts the critical path of the Work. A formal change order shall be issued within the time stated on the Change Directive.

§ 6.1.8 The Design-Builder shall notify the Owner, if the Design-Builder believes that a change in scope or design will require a change in the Contract Sum. This request shall specify the reasons for the change and all effects such change will have on the Work. The Owner shall have the right to require the performance thereof on a lump sum basis, a unit price not to exceed basis, or a time and material not to exceed basis.

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§ 6.1.9 The Design-Builder acknowledges that some changes in the Project may require approval by the City of Durham Council. So as not to delay the Project, the Design-Builder shall notify the Owner any deadlines for responses and how the Owner's failure to respond will impact the Project schedule.

§ 6.1.10 Upon receipt of an Owner directed change request, the Design-Builder shall submit a proposal within ten (10) working days, or provide written justification acceptable to the Owner within five (5) working days stating the additional time required to submit a proper proposal for the change requested. The Design-Builder's proposal shall be itemized and segregated by labor and materials for the various components of the change in or addition to the Work. No aggregate labor total will be acceptable. The Design-Builder's proposal shall be accompanied by signed proposals by the Architect, Consultant, subconsultant, Contractor, subcontractor, or any other persons who will perform any portion of the change in, or addition to, the Work, and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the Design-Builder's estimate of the time required to perform said changes or additional Work.

§ 6.1.11 All Change Orders shall be supported by a breakdown showing method of arriving at net cost as defined below. The Owner will review the Design-Builder's analysis and cost data and advise the Design-Builder of its findings. The Design-Builder will provide such supporting data in suitable format. Within fourteen (14) days after receipt of the Design-Builder's proposal, the Owner shall prepare the Change Order and forward to the Design-Builder for its signature or otherwise respond, in writing, to the Design-Builder's proposal. Within seven (7) days after receipt of the Change Order, the Design-Builder shall return the Change Order to the Owner for the Owner's signature. The Owner shall endeavor to execute the Change Order within seven (7) days of receipt, or in accordance with the Owner's standard procedures. Upon approval by the Owner, a copy of the Change Order will be sent to the Design-Builder. In case of emergency or extenuating circumstances, approval of Change Orders may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.

§ 6.1.12 The portions of the proposal relating to labor and materials may include the reasonably anticipated direct costs to the Design-Builder, Architect, Consultant, subconsultant, Contractor, subcontractor, or any other persons for labor and materials to be purchased for incorporation in the change in the Work, plus transportation and applicable sales and use taxes. The term "direct cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:

.1 The actual costs of materials and supplies incorporated or consumed as part of the Project, including a list of quantities of products required and unit costs, with the total amount of purchases to be made. Where requested by the Owner, the Design-Builder shall furnish survey data to substantiate quantities requested. Such costs shall be charged at the lowest price available to the Design-Builder but in no event shall such costs exceed competitive costs obtainable from other contractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to the Owner, and the Design-Builder shall make provisions so that they may be obtained;

.2 The actual costs of labor expended on the Project site in direct performance of the extra work;

.3 The actual costs of labor burden for employees at the Project site, or fabrication of off-site work, in direct performance of the Change Order, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty-nine percent (49%) of the actual costs of labor;

.4 The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the Project;

.5 The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the Project;

.6 Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the Owner;

.7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by Owner's Representative, exclusive of hand tools, used directly in the performance of the Change Order. Such rental charges shall not exceed the current prevailing and published commercial

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rental charges for the area in which the Work is performed. The Design-Builder shall attach a copy of said schedule to the request. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary.

.8 The Design-Builder may include up to fifteen percent (15%) of said costs as overhead and profit for its subconsultants or subcontractors. In the case of deductible change orders, the Design-Builder shall deduct no less than five percent (5%) profit for its subconsultants and subcontractors, but no allowances for overhead.

§ 6.1.13 If any of the items included in the lump sum proposal are covered by unit prices, the Owner may, if it requires the change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No additional subconsultant or subcontractor overhead and profit shall be applied to any unit prices.

§ 6.1.14 In the event that the Design-Builder fails to submit its proposal in accordance with the procedures outlined above or obtain approval of an extension of time within the designated period, the Owner may order the Design-Builder to proceed with the change or addition to the Work and the Design-Builder shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the Work in question, which determination shall be final and binding upon the Design-Builder.

§ 6.1.15 The Owner reserves the right to reject the Design-Builder's proposal for a change in the Work and to elect to perform said Work using a separate subcontractor. Under such circumstances, the Design-Builder shall coordinate the performance of the Work.

§ 6.1.16 For any approved time extensions to the period of performance of the Contract, the Design-Builder shall not be entitled to home office expenses, no matter the cause(s) of that led to the time extension. The Design-Builder shall be entitled to direct labor and equipment costs that result from any time extension, provided that the Design-Builder can demonstrate to the Owner that such direct labor and equipment costs were unexpected, that the Design-Builder made reasonable efforts to mitigate the direct cost impacts, and documentation can be provided to substantiate the costs.

§ 6.1.17 The Design-Builder shall not be entitled to escalation of cost for materials costs related to time extensions, no matter the cause(s) of the time extension.

§ 6.1.18 If the Owner requests a change order and the Design-Builder's terms are unacceptable, the Owner may require the Design-Builder to perform such Work on a time and material basis. If the Owner elects to have the change in the Work performed on a time and material basis, the Design-Builder shall submit to the Owner daily time and material tickets, to include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Design-Builder to secure any required authentication shall constitute a waiver by the Design-Builder of any claim for the cost of that portion of the change in the Work covered by a non-authenticated ticket or invoice.

§ 6.1.19 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in or addition to the Work based upon the Design-Builder's proposal and the Owner does not elect to have the change in the Work performed on a time and material basis, Owner has the right to direct in writing that the Design-Builder perform the change in the Work. Failure of the parties to reach agreement regarding the cost and time of the performing the change in the Work regardless of any pending protest, shall not relieve the Design-Builder from performing the change in the Work promptly and expeditiously.

§ 6.1.20 At the time of signing a Change Order, the Design-Builder shall be required to certify as follows: "I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety." Failure of the Design-Builder to mail change orders to its surety, shall not relieve the surety of any its obligations to the Owner.

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A Change Order, when issued, shall be full compensation, or credit, for the Work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the Project, if any, as a result of the change in the Work.

§ 6.1.21 No Change Order will invalidate, relieve or release the Design-Builder from any guarantee given by it pertinent to the contract provisions. No Change Order will affect the validity of the performance bond or relieve the surety on said bond.

§ 6.1.22 In the event of emergency endangering life or property, the Design-Builder and the Architect, Consultant, subconsultant, Contractor, or subcontractor may be directed to proceed on a time and material basis by the Owner's representative whereupon the Design-Builder shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the Work the Change Order will be prepared and settled as outlined herein.

§ 6.1.23 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or order for a minor change in the Work.

§ 6.1.24 Every Change in the Work that affects the Contract Time, the Cost of the Work, or the Contract Sum of the Project requires approval by either the Durham City Manager or the General Services Director or his or her designee. No such Change shall be binding on the Owner without written approval by either the Durham City Manager or the General Services Director or his or her designee.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; ~~and~~

.3 The extent of the adjustment, if any, in the Contract Time~~.~~;

.4 The adjustment to the Contract Sum and/or Contract Time fully compensates the Design-Builder for the change.

§ 6.2.1 No party may reserve a right to additional compensation or time for the change in the Work incorporated into a Change Order without the written consent of the Owner. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. If a Change Order increases the Contract Sum, the Design-Builder shall include the Work covered by such Change Orders in Applications for Payment.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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.4 As provided in Section 6.3.7.

The methods provided in Section 6.3.3.1 and 6.3.3.3 shall not be used unless the other methods in this Section 6.3.3 are inapplicable or inequitable.

§ 6.3.4 If unit prices are stated in the Design-Build Documents, the Design-Builder shall perform the Work referred to or described by the unit price provisions at the price per unit of the specified measurement for materials, equipment, and services, as needed for the Work. Each unit price the dollar amount that the Design-Builder deemed adequate, at the time of the submission of its bid or execution of the Change Order agreeing on the unit price, to cover the Design-Builder's costs, including overhead, and profit to supply the materials, equipment, and services represented by the unit price. The Design-Build Documents may show the multiplication of a unit price by a specified quantity (which was estimated as needed) in order to calculate the extension, or the "product" in dollars. The Owner is not contractually bound to pay for the estimated quantity of those items, and the Owner does not covenant that the estimated quantity will be used. Instead, the Owner will be contractually bound to pay for the actual quantity properly incorporated in the Work, at the unit price stated in the Design-Build Documents. It is presumed that any change of quantities (of items to be paid on a unit price basis) in a proposed Change Order or Change Directive will not cause substantial inequity, but to the extent that presumption is overcome, the rest of this Section 6.3.4 shall apply. If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

.1 Additional costs of professional services;

.2 Costs of labor, including social security, unemployment insurance, ~~fringe benefits required by agreement or custom,~~ and workers' compensation insurance;

.3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 Costs of premiums for all bonds ~~and insurance~~, permit fees, and sales, use or similar taxes related to the Work; and

.6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 (No payment without documentation) The Owner shall not pay for any cost for any Work attributable to the change in the Work or any cost under Section 6.3.7 or 6.3.8 unless documentation required by the Design-Build Documents is supplied for that cost. Those required documents include:

.1 For costs under Section 6.3.7.1 and 6/3/7/2, for each person who worked on the additional Work: a statement showing his or her job title, hourly rate paid, other amounts described under Section 6.3.7.1 and 6.3.7.2 that were paid, and the net change in the number of hours worked attributable to the change in the Work.

.2 For costs under Section 6.3.7.3: dated receipts from the Design-Builder or others. The receipts must acknowledge the Design-Builder's payment, identify the materials, supplies, equipment and show the name of the Owner's Project.

.3 For costs under Section 6.3.7.5: dated receipts from the rental the Design-Builder or others. The receipts must acknowledge the Design-Builder's payment, identify the machinery and equipment, and show the name of the Owner's Project, the rental rate, and the number of hours, days, miles, or other basis of the charge. If the Design-Builder supplies the machinery or equipment, the statement must show the rental rate and the number of hours, days, miles, or other basis of the charge, and the rental rate must not exceed the market rental rate.

.4 For costs under Section 6.3.7.5, written proof of a net change in the amount paid by the Design-Builder attributable to the change in the Work. For bonds, the proof must include the invoice or statement from the surety or its agent showing that it is attributable to the change in the Work.

.5 For costs under Section 6.3.7.6, for each person who worked on the additional Work: a statement showing his or her job title, method of his or her compensation, and the net change in the number of hours worked attributable to the change in the Work.

§ 6.3.12 (Adjustment of Contract Sum when substantially all of an alternate is deleted). If the Owner deletes substantially all of the Work contemplated by an alternate before five percent (5%) of the Work under that alternate has been performed, the Contract Sum shall be adjusted as provided in this Section 6.3.12 and not pursuant to the last sentence of Section 6.3.7. The method and the adjustment shall be determined by the Owner as follows: First, the Contract Sum will be reduced by the full amount of the alternate that is deleted. Next, the Contract Sum will be increased to compensate the Design-Builder for losses that the Design-Builder cannot avoid, if the Design-Builder had acted reasonably in making arrangements to do the Work contemplated by the alternate before it was deleted. For example, the Contract Sum may be adjusted to reflect a restocking fee charged to the Design-Builder by others for goods, but not if the Design-Builder did not actually order the goods, or if it was not reasonable for the Design-Builder to have ordered the goods when it did so, or if the restocking fee was not customarily charged for those goods, or not to the extent the restocking fee was unreasonable in amount, or if other circumstances exist under which it would be inequitable for the restocking fee to be paid by the Owner.

.1 (Limitations on adjustment) The Contract Sum will not be increased to reflect profits that the Design-Builder, Architect, Consultant, subconsultant, Contractor, subcontractor, or any other person would or might have made if the alternate had not been deleted. The Contract Sum will not be increased to reflect overhead that the Design-Builder, Architect, Consultant, subconsultant, Contractor or subcontractor, or any other person would or might have incurred if the alternate had not been deleted.

To the extent that the Design-Builder performed up to five percent of the Work contemplated by the deleted alternate, the Contract Sum shall be adjusted for the Work performed as if the Work performed had been the subject of an additive Change Directive.

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§ 6.3.13 Execution of a Change Directive by the Owner shall be approved in writing by the City Manager, the City Deputy or Assistant City Manager, or the City General Services Director. Any Change Directive purported to be executed by the Owner, which is not approved in writing by the City Manager, the City Deputy or Assistant City Manager, or the City General Services Director, shall be invalid, void and of no effect.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

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§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of ~~final~~ Final ~~completion~~ Completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof,

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until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by ~~an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by~~ labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending ~~mediation and binding~~ any dispute resolution process; or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 ~~This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.~~ Notwithstanding anything to the contrary in the Design Build Documents, the Design Builder's sole remedy for any (1) delay in the commencement, prosecution, or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar delays and losses (said 1, 2, 3, and 4 being collectively referred to in this Section 8.2.3 as 'Such Delays'), whether or not Such Delays are foreseeable, shall be an extension of the Contract Time if permitted and granted under Section 8.2.1 and, to the extent permitted under this Section 8.2.3, an adjustment in the Contract Sum. In no event shall the Design-Builder be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Such Delays, including consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Design-Builder shall be permitted an adjustment in the Contract Sum if any of Such Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than the "Elimination Period". If the length of the Elimination Period is stated elsewhere in the Design-Build Documents, that length shall apply; if not, the Elimination Period shall be ten (10) days. The 'Compensable Delay Time' equals the period of Such Delays minus the Elimination Period. Any adjustment in the Contract Sum pursuant to this Section 8.2.3 shall be limited to the increase, if any, of direct costs incurred by the Design-Builder in performing the Work as a result of the fact that the Compensable Delay Time exceeded the Elimination Period. Direct costs for purposes of this Section 8.3.2 do not include profit or overhead.

§ 8.2.4 (Delay damages) Nothing in Section 8.2.3 or any other provision of the Design-Build Documents is intended to forbid or limit compensable damages for delays caused solely by the Owner or its agent. For purposes of the preceding sentence, 'Owner or its agent' does not include the Design-Builder, Architect, Consultants,

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Contractors, prime contractors or their subcontractors.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 If required by Owner, an Application for Payment shall be accompanied by (1) a summary showing payments that will be made to the Architect, Consultant, subconsultant, Contractor, subcontractor, material supplier, or other persons or entities covered by such application and conditional waivers and releases of claims and stop notices, (2) certified payroll of Design-Builder, Architect, Consultant, subconsultant, Contractor, subcontractor, material supplier, or other persons or entities covered by such application, and (3) unconditional waivers and releases of claims and stop notices from the Architect, Consultant, subconsultant, Contractor, subcontractor, material supplier, or other persons or entities listed in the preceding application for payment covering sums disbursed pursuant to that preceding application for payment. Design-Builder warrants that, upon submittal of an application for payment, all Work for which certificates for payment have been previously issued and payment has been received from Owner, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Architect, Consultant, subconsultant, Contractor, subcontractor, material supplier, or other persons or entities entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Design-Builder shall also comply with the following specific requirements:

.1 The aggregate cost of materials stored off-site shall not exceed _____ dollars ($_____)i at any time without written approval of the Owner.

.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.

.3 With each Application for Payment, the Design-Builder shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at

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each location. The Design-Builder shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than their total value.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, specifically marked for use on the Project, and segregated from other materials at the storage facility.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

.1 defective Work, including design and construction, not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

.3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. The Design-Builder and such Architect, Consultant, subconsultant, Contractor, or subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. Any such joint payment shall constitute payment to the Design-Builder, in the full amount of the joint payment, as if such joint payment were made to the Design-Builder alone. In no event shall any joint payment be construed to create any contract between

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the Owner and any Architect, Consultant, subconsultant, Contractor, or subcontractor of any tier, obligations for the Owner to such Architects, Consultant, subconsultant, Contractors or subcontractors, or any rights in such Architects, Consultant, subconsultant, Contractors or subcontractors against the Owner

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 (Prompt Payments to Subcontractors) For purposes of this Section 9.6.2, the term "Subcontractor(s)" shall mean any person or legal entity with which the Design-Builder contracts directly for any of the Work to be performed under this Contract.

.1 Within 7 days of receipt by the Design-Builder of each payment from the Owner under this contract, the Design-Builder shall pay all Subcontractors based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Design-Builder from the Owner under this contract, the Design-Builder shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this Section 9.6.2.1 directly against the Design-Builder, but not against the Owner. If the Owner's Project Manager determines that it is appropriate, in order to enforce this Sub-subparagraph 9.6.2.1, the Owner may withhold the sums estimated by the Project Manager to be sufficient for subcontractor payment and this interest from progress or final payments to the Design-Builder. Further, if the contractor deliberately fails to pay the subcontractor, payments shall awarded to the subcontractor and shall be based on the contractor's schedule of values and/or the agreement between the Design-Builder and subcontractor or as defined by the project manager.

.2 Nothing in Section 9.6.2 shall prevent the Design-Builder at the time of invoicing, application, and certification to the Owner from withholding invoicing, application, and certification to the Owner for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the Subcontractor to make timely payments for labor, equipment, and materials; damage to the Design-Builder or another Subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage held by the Owner in its agreement with the Design-Builder.

.3 The Owner's Project Manager may require, as a prerequisite to making progress or final payments, that the Design-Builder provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Design-Builder. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

~~The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.~~

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and

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Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

~~If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.~~

§ 9.7.1 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents, including testing, approval by any applicable regulatory authority, and receipt of all the certificates of occupancy and other permits, approvals, licenses, and other documents from all governmental authorities that are necessary for the beneficial occupancy and use of the portion to be occupied or utilized such that the Work and the Project are functionally and legally usable by Owner for the purpose for which they are intended.~~so that the Owner can occupy or utilize the Work for its intended use~~. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

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§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.7 The acceptance of substantial completion payment shall constitute a waiver of all claims by the Design-Builder and the Architect, Consultant, subconsultant, Contractor, and subcontractors, except those previously made in writing and identified by the Design-Builder as unsettled at the time the Design-Builder submits the application for payment for substantial completion, and except for the retained sums due at final acceptance.

§ 9.8.8 The Design-Builder shall indemnify and hold the Owner harmless against any claims by the Architect, Consultant, subconsultant, Contractor, and subcontractors, that are waived because they were not made in writing and identified by the Design-Builder as unsettled when the Design-Builder submitted the application for payment for substantial completion.

§ 9.8.9 The Owner shall have the option to correct or complete any and all Punch List items not completed by the Design-Builder to the satisfaction of the Owner within ninety (90) sixty (60) days the Project from the actual date of substantial completion for the Project by utilizing its own forces or by hiring others. The cost of such correction of remaining Punch List items by the Owner or others shall be deducted from the final payment to the Design-Builder.

§ 9.8.10 If the Design-Builder does not complete certain Punch List items within the required time period, all warranties and guarantees for such incomplete Punch List items shall become effective upon Design-Builder submitting to the Owner certification of the date such items were completed and approval by the Owner's representative. The issuance of the certificate of substantial completion does not indicate final acceptance of the individual Project by the Owner, and the Design-Builder is not relieved of any responsibility for the individual Project except as specifically stated in the certificate of substantial completion.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) all manufacturer's warranties, guarantees, product data, and maintenance and operations manuals required under the Design-Build Documents, (7) an assignment of all manufacturer's warranties related to materials and labor used in the Work, (8) a statement that the Design Builder has complied with Section 9.10.2.1 (below), (9) all certificates not previously delivered pursuant to Section 15.5 and (~~7~~10) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

1. Before it is entitled to receive final payment, the Design-Builder shall submit to the Owner the originals of the permits, licenses, certificates, and approvals that the Design-Builder received pursuant to Section 5.5.

§ 9.10.3 If, after Substantial Completion of the Work, ~~final~~ Final ~~completion~~ Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting ~~final~~ Final ~~completion~~Completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Design-Build Documents; or
.3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect all property outside the Site against all hazards arising out of the Work. Any damage to property or improvements outside the Site shall be promptly repaired by the Design-Builder.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Design-Builder shall give the Owner reasonable advance notice.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. In foregoing sentence, the words "anyone directly or indirectly employed by either of them," (i.e., the Owner) and "anyone for whose acts either of them [i.e., the Owner] may be liable," shall not be construed to include the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them or anyone for whose acts the he Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them may be liable. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible,

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written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 *(Securing Work)* When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.2.10 *(Reports of Incidents)* The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses,. In addition, if death, serous personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or message to the Owner.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a concealed or undisclosed hazardous material or substance (as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended) not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 *[Intentionally omitted]*~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 *[Intentionally omitted]*~~If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of~~

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~~performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred~~.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. This Section 10.4 shall not be construed to reduce the Design-Builder's responsibilities, including those required by the rest of Article 10 and the remainder of the Design-Build Documents.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. If prior to the date of Substantial Completion, the Design-Builder, the Architect, Consultants, Contractors, subconsultants or other directly or indirectly under their employment use or damage any portion of the Work, including mechanical, electrical, plumbing, or other building systems, machinery, equipment, or other mechanical device, the Design-Builder, at no expense to the Owner, shall cause such portion, system, device, or item to be restored (whether by replacement, repair, or otherwise) to the condition the item was required to be in, if such use or damage had not occurred. Nothing herein shall reduce the duty of the Design-Builder with respect to such item in order to obtain a final Certificate for Payment.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. Such a written acceptance is not effective as an acceptance unless it specifically describes the condition that is not in accordance with the Design-Build Documents and contains substantially the following statement: "The Owner accepts [such condition] despite its not being in accordance with the Design-Build Documents." During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

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§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 The Design-Builder hereby assigns to the Owner, without reservation, all copyrights in all Project-related documents, models, photographs, and other expression created by the Design-Builder, Architect, Consultant. Contractors. Among those documents are certain "Instruments of Service," including the design drawings and the Construction Documents. The Owner's obligation to pay the Design-Builder is expressly conditioned upon the Design-Builder's obtaining a valid written comprehensive assignment of copyrights from its Architect, Consultants, and Contractors in terms identical to those that obligate the Design-Builder to the Owner as expressed in this subsection, which copyrights the Design-Builder, in turn, hereby assigns to the Owner. The Owner, in return, hereby grants the Design-Builder, Architect, Consultants and Contractors a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Design-Builder's performance of its obligations under this Agreement for the Design-Builder's archival records, and for the Design-Builder's reproduction of drawings and photographs in the Design-Builder's marketing materials, provided that the Project-related contents of those materials are approved as requested in Section 3.1.13.4 of this Agreement. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Design-Builder or the accused commission by the Design-Builder of a tort or a crime affecting the Owner or the Project or upon termination of this Agreement. This nonexclusive license is granted to the Design-Builder alone and shall not be assigned by the Design-Builder to any other person or entity, except that the non-exclusive license granted in this Agreement to the Design-Builder for purposes of the Design-Builder's performance hereunder may be sub-licensed to the Architect, Consultants, and Contractors (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an Design-Builder's assignment of this nonexclusive license to another or its attempt to do so.~~Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.~~

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 *[Intentionally omitted]*~~Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of~~

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~~constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.~~

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. ~~The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.~~

§ 12.3.2 To the extent that liability arises from misuse of the Instruments of Service by the Owner or another architect or engineer, the Design-Builder shall not be responsible for that misuse. If the Owner uses the Instruments of Services for purposes including additions to and modifications of the Project, and for other projects, the Owner shall indemnify the Design-Builder for losses, including reasonable attorneys' fees, suffered by the Design-Builder as a result of the use of the design and these documents for such other purposes. ~~In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.~~

§ 12.3.3 Except for the licenses granted in this Article 12, no other license or right shall be deemed granted or implied under this Agreement. No other Project-related data, expression, or documents may be reproduced by the Design-Builder, Architect, Consultants or Contractors for any other purposes without the express written permission of the Owner.

§ 12.3.4 If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Design-Builder, Architect, Consultants or Contractor, the Owner shall (where permitted or required by law) remove or completely obliterate the original professional's seals, logos, and other indications on the documents of the identity of the Design-Builder, Architect, Consultants and Contractor.

§ 12.3.5 The Design-Builder shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project-related documents, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written authorization of the Owner or as required by law or to defend any claim asserted against the Design-Builder.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make undisputed payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination ~~or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement~~. ~~If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work.~~ In the event ~~of a suspension of~~the Owner

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suspends the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all undisputed sums due prior to suspension and any reasonable and actual expenses incurred in the interruption and resumption of the Design-Builder's Work. ~~The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.~~

§ 13.1.2 *[Intentionally omitted]*~~If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.~~

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of ~~30~~ 60 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or

.3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the ~~reason~~ good faith basis for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents~~; or~~.

~~.4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.~~

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 The notices referred to in this Article 13 shall state the reasons and grounds for the termination. The reasons and grounds for termination by the Design-Builder set forth in Article 13 are exclusive. Those reasons and grounds shall not constitute reasons or grounds for termination by the Design-Builder if a substantial cure occurs within seven days after the Owner receives notice of proposed termination.~~If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate~~

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~~the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~

§ 13.2.1.4 If an extension of Contract Time has been granted because of a circumstance set forth in Section 13.2.1.1, the period of that extension shall be not be counted towards the 60-day period created in the first clause of Section 13.2.1.1.~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.~~

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

.1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;

.2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

.3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;

.4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~

.5 becomes insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency;

.6 fails to make satisfactory progress as defined in this Section 13.2.2 on the Project; or

.7 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder ~~and the Design-Builder's surety, if any~~, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

.1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

.2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

Non exercise of the Owner's rights under this Subparagraph 13.2.2.2 shall not be considered a failure to mitigate damages, nor shall it be the grounds for any claim against the Owner. In the notice, the Owner may specify when the termination is effective or it may state that the termination shall be effective upon additional notice as specified in the notice.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

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.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may terminate this Contract without cause upon at least seven (7) days' written notice to the Design-Builder and the Design-Builder's surety, if any. In that notice (the "First Notice"), the Owner may specify when the termination is effective or it may state that the termination shall be effective upon additional notice as specified in the First Notice.

.1 Termination under this paragraph shall not release either the Design-Builder or its surety from liability or responsibility for any default or other transaction or occurrence prior to the date of termination and demobilization from the Project.

~~, at any time, terminate the Contract for the Owner's convenience and without cause~~.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 COMPENSATION FOR TERMINATION FOR CONVENIENCE As full compensation due to Design-Builder for any termination for convenience, including any amounts due to Architect, Consultants, Contractors or subcontractors on account of such termination, Owner shall pay Design-Builder the following amounts:

.1 Cost of the Work, as defined under this Agreement, incurred to the date of termination;

.2 Contract Compliance costs (i) incurred prior to termination in preparing to perform and in performing the terminated portion of the Work or this Agreement, and (ii) incurred in terminating Design-Builder's, Architect's, Consultants', Contractors' or subcontractors' performance;

.3 Reasonable costs of settling and paying claims arising out of the termination of Architect, Consultants, Contractors or subcontractors or orders pursuant to the order of termination;

§ 13.2.4.4 The total sum to be paid the Design-Builder under Section 13.2.4.3 shall not exceed the Contract Sum of the terminated Project, as properly adjusted, reduced by the amounts of payments otherwise made, and shall in no event include duplication of payment.

§ 13.2.4.5 In no event shall Design-Builder be entitled to recover from Owner, on its own account or on behalf of the Architect, Consultants, Contractors or subcontractors, lost profits or other consequential damages, whether its own or those of the Architect, Consultants, Contractors or subcontractors on account of a termination for convenience or an erroneous termination for cause.

§ 13.2.4.6 *(Goods Intended for the Work)* With respect to goods that the Design-Builder has ordered that are demonstrably intended for the Work --

.1 Design-Builder shall, as soon as practicable after receiving a notice from Owner pursuant to Sectoin 13.2.4.2, give the Owner written notice of the entire text of the contracts and other documents by which the goods were ordered, showing the cost, delivery dates, and all terms and conditions (including those relating to ordering and canceling).

.2 The Owner shall have the following options: (a) to direct the Design-Builder to cancel any one or more orders, in which case the Owner shall be liable for cancellation and restocking charges and other charges properly attributable to the cancellation; or (b) to direct the Design-Builder to keep any one or more orders in effect and/or to assign any one or more orders to the Owner, in which case the Owner shall be responsible for bearing the costs of the order.

.3 Within 10 days of the Owner's receiving notice under .1 above, the Owner shall give the Design-Builder notice of which options it exercises under .2. The Owner shall bear the losses suffered by the Design-Builder with respect to orders for which the Owner fails to give that notice within that 10-day

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period as if the Design-Builder had taken whatever action as is appropriate to keep the costs to the Owner at a minimum.

.4 The Design-Builder and the Owner shall cooperate in good faith to carry out the provisions of this Section 13.2.4.1 efficiently and without imposing unnecessary costs on either party.

.5 Notices given under this Section 13.2.4.1 shall comply with Section 15.3.1 and shall be given by fax (pursuant to 15.3.1(c)) and also by either 15.3(a) or (b).

~~In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed~~.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the dispute resolution process under Section 14.3.2~~binding dispute resolution method selected in Section 1.3~~, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later and same shall set forth in detail all known facts supporting the claim.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. In the event Design-Builder seeks to make a claim for an increase in its compensation, or an adjustment of the Contract Sum, or both, then as a condition precedent to any liability of Owner therefor, Design-Builder shall strictly comply with the requirements of paragraph 14.1.3 and 14.2 and such claim shall be made by Design-Builder before proceeding to execute any additional or changed work. Failure to satisfy this condition precedent shall constitute a waiver by Design-Builder of any claim for additional compensation. Any liability of Owner for additional costs to Design-Builder shall be strictly limited to actual and reasonable direct costs incurred by Design-Builder and shall in no event include indirect costs or consequential damages of Design-Builder or others. Absent a Change Order, Owner shall not be liable to Design-Builder for claims of third parties, including subcontractors, unless and until liability of the Design-Builder has been established therefor in a court of competent jurisdiction. No change in Design-Builder's compensation, nor adjustment of the Contract Sum, shall be made except by Change Order issued in accordance with the terms of this Agreement. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

.1 The Design-Builder shall retain all bid documents and estimates, including its subcontractors and suppliers, so as to provide a reference, if needed by the Owner, to confirm issues of cost in a claim.

.2 The Design-Builder shall not act on instructions received by it from persons, and any claims for extra compensation or extension of time on account of such instruction will not be honored.

.3 If the parties are unable to agree to the reasonable cost and time to perform the change, or are unable to agree as to whether a change occurred, the Owner shall make a unilateral determination regarding the basis of

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proceeding, subject to dispute resolution at a later time. The Design-Builder shall proceed with the Work as directed by the Owner.

.4 Should a claim for an increase in the Contract Sum by the Design-Builder be denied by the Owner, the Design-Builder may request mediation in connection with the dispute resolution rules adopted for this Project. ~~If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.~~

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If Design-Builder makes any claim for delay, Design-Builder shall specifically set forth how and why the delay in question affected the critical path, including submission of a time impact analysis based upon the most recently submitted schedule.

.1 No claim for an increase in the contract time shall be considered unless the Design-Builder shall include with its statement of claim a time impact analysis of the critical path. The Design-Builder shall provide a fragmentary critical path method network ("FRAGNET") presentation, clearly showing the impact on the critical path. The time extension requested by the Design-Builder shall be limited to the days of delay shown on the time impact analysis.

.2 The Design-Builder shall not be entitled to any extension of the contract period unless the delay affected the end date or milestone as shown by a time impact analysis based upon the approved CPM schedule submitted with the Application for Payment immediately preceding the date of the delaying event or occurrence.

.3 Each time impact analysis shall provide information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. The time impact analysis shall be provided to the Owner at no cost. Each time impact analysis shall be in a form and content reasonably acceptable to the Owner, and shall include, but not be limited to, the general information set forth in this section appropriate to the type of request (i.e., change or alleged delay), plus the following:

.1 A fragmentary CPM network ("FRAGNET") illustrating how the Design-Builder proposes to have the change or alleged delay incorporated into the current project schedule and;

.2 Identification of the preceding and succeeding activities in the current project schedule to which the FRAGNET is to be connected, together with engineering estimates and other appropriate data justifying the proposal.

.3 The analysis shall clearly show that the Design-Builder has used in full all the activity float time available for the work involved in this request.

.4 The time impact analysis shall be based upon the dates when the alleged delay or delays began, the status of the work at that time, and shall include time computations for all affected activities.

.4 Notwithstanding anything else contained in this Article or elsewhere, Design-Builder shall not be entitled to an extension of time unless it can show that the abnormal weather or site conditions specifically affected the critical path, and it meets all of the requirements for such a claim under this Agreement. Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where Work is performed. For purpose of determining the extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding twenty (20) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where Work is performed and on daily weather logs kept on the job site by the Design-Builder reflecting the effect of the weather on progress of the Work and initialed by the Owner.

.5 Only delays which are determined by the Owner to extend the critical path of the schedule will result in a time extension. Neither the Owner nor the Design-Builder shall be considered to own the schedule float time. Nothing in this provision, however, shall entitle the Design-Builder to an additional time or compensation for a delay that prevents the Design-Builder from completing the project prior to the original contract period, as adjusted by Change Orders.

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.6 Defaults or other breaches of any legal duty by a subcontractor shall not be grounds for a time extension under the Agreement.

.7 *[Intentionally omitted]*

.8 It is the Design-Builder's responsibility to meet the required date of substantial completion, as extended by the Owner in accordance with the terms of this Agreement. If the Design-Builder finds that the schedule is likely to be impacted by an action or inaction on the part of the Owner, the Design-Builder must review the situation with the Owner in a timely manner, and if necessary, to obtain a change order for such Work prior to taking any action which has a time and/or cost impact. All Change Orders will be settled in full. No caveats for later settlement of time extensions or delays will be accepted.

§14.1.6.2 A basis exists for an extension of time if the Design-Builder is delayed in performing the Work, but only to the extent that delays are unforeseeable, unavoidable, beyond the control and without fault or negligence, in whole or in part, of the Design-Builder, and its subcontractors, sub-subcontractors, and suppliers at every tier, and to the extent that the delays directly impact the Design-Builder's ability to achieve completion of the Work in accordance with the time requirements set forth herein (taking into account extensions of time approved in accordance with this Agreement). Assessment of the existence of the basis for a time extension shall be determined by an examination of whether the delay event affects the critical path of the Project. A basis exists for an extension of time only if (a) the aforesaid criteria are met, (b) the delays cannot be made up by reasonable efforts which otherwise do not increase the cost of the Work, and (c) said delays stem from the following causes:

.1 an act or failure to act on the part of the Owner, any consultant of the Owner, employee of the Owner or separate contractor of the Owner constituting a breach of Owner's obligations under the Design-Build Documents or an injunction or other Court Order against Owner or Owner's representatives;

.2 All causes of delay other than an act or failure to act on the part of the Owner, or Owner's consultants, including but not limited to, adverse weather, acts of God, riots, civil commotions, acts of War, unavoidable casualties to work in progress, epidemics, quarantine restrictions, organized labor disputes, freight embargoes, unanticipated and undiscoverable environmental issues, or other causes traditionally defined as a force majeure.

.3 Changes in the work.

§14.1.6.3 If the basis exists for an extension of time as set forth above, and the Design-Builder has timely submitted a written claim documenting the basis for such extension as set forth herein, Owner may either:

.1 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and, in the case of a cause identified in Section 14.1.6.2.1, grant a corresponding adjustment in the Contract Sum;

.2 Accept a reasonable and appropriate time extension to cover the actual delay to the critical path of the Work, and in the case of a cause identified in Section 14.1.6.2.1 there will be no corresponding adjustment in the Contract Sum, and the sole recourse of Design-Builder will be an entitlement to a time extension regardless of actual sources or cause of delay;

.3 Submit a written Change Order to the Design-Builder to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after the submission to Owner of a good faith estimate of the costs of such acceleration and adjusting the Contract Sum to compensate Design-Builder for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and document premium or overtime labor costs. The Design-Builder shall not be entitled to receive any compensation for such acceleration of construction activities, unless the acceleration is performed pursuant to a written Change Order from the Owner; or

.4 Employ a combination of the above remedies.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:

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.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.1.8 Liquidated Damages

The amounts stated as liquidated damages are agreed to be reasonable estimates of Owner's losses and expenses for delays, including inspections, Owner's architectural and engineering consulting services, and administrative costs. If any part of those delays is caused by Owner, liquidated damages shall not be charged for the portion of the delay time that was caused by Owner but shall be charged for the portion not so caused. In its discretion, the Owner may waive some or all liquidated damages against the Design-Builder. Such a waiver is valid only if done by a signed writing that and specifically mentions "liquidated damages." Such a waiver shall not constitute an extension of time.

.1 The Design-Builder acknowledges that delays will damage the Owner, but also acknowledges that proof of such damages would be difficult and costly to both parties, and that the injury to the Owner which could result from a failure of the Design-Builder to complete on schedule is uncertain and cannot be computed with exact precision. In order to liquidate in advance the delay damages that the Owner will be entitled to recover from the Design-Builder in the event of unexcused delays in the completion of the Project, the Design-Builder agrees that it will pay, and that the Owner may retain from the funds otherwise to be paid to the Design-Builder, the following liquidated damages, which sums are agreed upon as a reasonable and proper measure of damages which the Owner will sustain by failure of the Design-Builder to complete the Work within the time stipulated:

.1 The sum set forth in Exhibit A, Design-Build Amendment for each consecutive calendar day that the Design-Builder fails to achieve substantial completion of the entire Project.

.2 *[Intentionally omitted]*

.3 The Design-Builder may in its discretion provide in its construction contracts that its subcontractors will be liable for liquidated delay damages, in the amount of the Owner's liquidated damages or in different amounts.

.4 This provision for liquidated damages does not bar the Owner's right to enforce other contractual rights and remedies, including without limitation the right to order the Design-Builder to accelerate the Work or the right to terminate. Liquidated damages represent the Owner's best effort at the commencement of the Work to estimate its reasonable anticipated damages for delay, and should not be construed as a penalty.

§ 14.1.9 Concurrent Delays

To the extent that any event, instruction, condition, or circumstance that would otherwise entitle the Design-Builder to additional time and delay costs as defined above occurs concurrently with any delaying event that would not entitle the Design-Builder to additional time or compensation or an adjustment of the Contract Sum, the Design-Builder and Owner agree that an extension of the contract completion time is the Design-Builder's sole and exclusive remedy. The Design-Builder hereby waives any right or entitlement to additional compensation for such delay and the Owner waives any right to liquidated damages, if applicable, for the period of concurrent delay.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement ~~and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement~~, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner

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shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to the dispute resolution process under Section 14.3.2~~binding dispute resolution~~.

§ 14.2.6 *[Intentionally omitted]*~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.~~

§ 14.2.6.1 *[Intentionally omitted]*~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 The decision of the Owner in response to a Claim shall not be a condition precedent to the dispute resolution process in the event the position of the Owner is vacant.~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

§ 14.3 ~~Mediation~~Dispute Resolution Process

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to the dispute resolution process under Section 14.3.2 as a condition precedent to initiating any civil action against the Owner in a forum of competent jurisdiction.~~mediation as a condition precedent to binding dispute resolution~~.

§ 14.3.2 Any party allowed to use the dispute resolution ("DR") process adopted by the State Building Commission pursuant to G. S. 143-135.26(11) and G. S. 143-128(f1) shall participate in mediation pursuant to the DR process as a precondition to initiating litigation concerning the dispute. The amount of $15,000 or more must be at issue before a party may require other parties to participate in the DR process. The costs of the DR process shall be divided between the parties to the dispute with at least one-third of the cost to be paid by the Owner, if the Owner is a party to the dispute.~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event,~~

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~~mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings~~.

§ 14.3.3 *[Intentionally deleted}.*~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.~~

§ 14.4 Arbitration

§ 14.4.1 The Design-Builder and the Owner shall not be obligated to use arbitration to settle any controversy or Claim arising out of or related to the Contract or the breach thereof. Any provision in any place in the Design-Build Documents to the effect that either of those parties is bound by arbitration is void. The Owner and Design-Builder agree to negotiate any claims in good faith, and if they cannot do so in accordance with section 14.3.2, then they shall resolve the claim by the institution of legal or equitable proceedings by either party.~~If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

§ 14.4.1.1 *[Intentionally deleted}.*~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

§ 14.4.2 *[Intentionally deleted}.*~~The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.~~

§ 14.4.3 *[Intentionally deleted}.*~~The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 14.4.4 ~~Consolidation or Joinder~~ *[Intentionally deleted}.*

§ 14.4.4.1 *[Intentionally deleted}.*~~Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

§ 14.4.4.2 *[Intentionally deleted}.*~~Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

§ 14.4.4.3 *[Intentionally deleted}.*~~The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.~~

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This Contract shall be governed by and construed in accordance with the law of North Carolina. The

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exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Design-Builder is not a natural person (for instance, the Design-Builder is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Design-Builder to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Design-Builder agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Design-Builder will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Design-Builder. This subsection (ii) does not apply while the Design-Builder maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.~~The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4~~.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.~~The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract~~.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

~~Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.~~

§ 15.3.1 If a party is notified of a replacement person for purpose of getting notice, then notices afterwards shall be directed to the replacement person. Written notices shall be deemed to have been duly served, made, and received, and receipt thereof completed, if (a) delivered in person to the individual or to that individual's receptionist, or (b) mailed by registered or certified mail to the last business address known to the party giving notice, or (c) faxed to the last fax number known to the party giving notice, provided that the fax transmission must be completed. In addition, written notices to the Owner must be directed to the Owner's representative, provided that if no individual is designated as the City's representative, then written notices must be directed to the City Manager. As used in this Paragraph 15.3.1, the word 'notice' includes 'request'.

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§ 15.3.2 (When notice made) The notice will be deemed served, made, and received, and receipt thereof completed, on the earlier of: (a) the date delivered in person, or (b) three days after placing in the custody of the U. S. Postal Service, or (c) the date the fax transmission was completed.

§ 15.3.3 (Address of surety) Notice to a surety may be sent to the address shown on the performance bond; if no address for the surety is shown on the performance bond, the surety's address provided by the N. C. Department of Insurance shall suffice; and if the Department of Insurance lacks an address, the last-known address of the attorney-in-fact who signed the performance bond shall suffice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.4.3 If liquidated damages are assessable against the Design-Builder, the Owner may, in its discretion, waive the imposition of some or all of the liquidated damages against the Design-Builder. That waiver shall be valid only if done by a writing signed by the Owner with written approval of the City Manager or an Assistant City Manager, and the waiver must refer specifically to "liquidated damages." That waiver shall not constitute an extension of the Contract Time.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense. It shall also bear a portion of the costs of the tests that revealed such failure in an amount determined by the Owner to be reasonably related to the significance of the failure and the reasonableness of ordering the tests, with the Owner bearing the rest of the costs of these tests that revealed such failure. The Design-Builder shall bear the portion of the cost of testing services required for the Design-Builder's convenience (e.g., the premium charged for services that are required on short notice) in the Design-Builder's scheduling and/or performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work that are not the fault of the Owner.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

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§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 Pronouns, Titles, Include and its Derivatives

Unless the context otherwise requires, all personal pronouns used in the Design-Build Documents shall include all other genders, and the singular shall include the plural and vice versa. Titles and headings of articles, paragraphs, subparagraphs, sections, subsections, parts, subparts, etc., in the Design-Build Documents are for convenience only, and neither limit nor amplify the provisions. The use in the Agreement, General Conditions, and Supplementary Conditions of "include" in its various forms and derivatives shall mean "without limitation" unless the context otherwise requires."

§ 15.10 Severing Invalid Provisions

Whenever possible, each provision of the Design-Build Documents shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of the Design-Build Documents is determined by a court of competent jurisdiction to be invalid or unenforceable, only such provision shall be ineffective, without invalidating the remaining provisions, which are hereby deemed severable.

§ 15.11 Interest

Payments due and unpaid under the Design-Build Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 15.12 Equal Opportunity, SDBE

The Design-Builder shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as amended from time to time. The failure of the Design-Builder to comply with Article III of Chapter 18 shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of Article III of Chapter 18, this Contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Design-Builder. Section 18-59(f) of that Article III of Chapter 18 provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall

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notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Design-Builder's alleged violations of its obligations under Article III of Chapter 18 and not to the Design-Builder's alleged violations of other obligations. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

§ 15.13 E-Verify Provision

The Design-Builder, acting as a contractor, and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify compliance section, the words contractors, subcontractor, and comply shall have the meanings intended and construed by NCGS 143-133.3. To the extent, however, this contract is subject to NCGS 143-129, the contractor and its subcontractors shall also comply with the requirements of Article 2 of Chapter 64 as applicable and construed by NCGS 143-129(j).

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

.1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder

.2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed

.3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds

.4 AIA Document A141™–2014, Exhibit C, Sustainable Projects, if completed

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

« »

.6 Other:

« »

FINAL

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This Agreement entered into as of the day and year first written above.

OWNER

CITY OF DURHAM

ATTEST:

By:

Preaudit Certification:

DESIGN-BUILDER

« [insert appropriate signature block here] »« »

« [insert appropriate notary acknowledgment here] »« »

~~OWNER *(Signature)*~~	~~DESIGN-BUILDER *(Signature)*~~
~~« »« »~~	~~« »« »~~
~~*(Printed name and title)*~~	~~*(Printed name and title)*~~

FINAL

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TEMPLATE AIA® Document A141™ – 2014 Exhibit A

Design-Build Amendment

Editing Template
CAUTION: Do not remove or otherwise edit Project Data fill-point (Basic Information, Contract Details and Project Team) when using this document

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »« »
« »

THE DESIGN-BUILDER:
(Name, legal status and address)

« »« »
« »

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

A.1 CONTRACT SUM

A.2 CONTRACT TIME

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM
§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the

TEMPLATE

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

[« »] Stipulated Sum, in accordance with Section A.1.2 below

[« »] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[« »] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum
§ A.1.2.1 The Stipulated Sum shall be « » ($ « »), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.2.3 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit ($0.00)

§ A.1.3 Cost of the Work Plus Design-Builder's Fee
§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price
§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4.3 Guaranteed Maximum Price
§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « » ($ « »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

« »

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§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price
Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide information below or reference an attachment.)

« »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.4.3.4 Unit Prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit ($0.00)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.5 Payments
§ A.1.5.1 Progress Payments
§ A.1.5.1.1 Prior to the submission of any Applications for Payment, the Design-Builder shall submit for approval a schedule of values with respective quantities. The schedule of values shall allocate the contract amount among the various portions of the Design-Builder's work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « » day of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Owner receives the Application for Payment. With respect to all materials, equipment, or supplies for which the Design-Builder has made a request for payment:

.1 all such materials, equipment or supplies shall be deemed owned by the Owner and shall be clearly marked as belonging to the Owner; and

.2 the Design-Builder shall be responsible for all security and shall promptly reimburse the Owner for all loss, damage and theft.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal

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or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment. In Addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with state law:

§ .1 A current sworn statement from the Design-Builder setting forth all contractors, subcontractors, and material suppliers with whom the Design Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor, subcontractor, or material supplier in the Application for Payment, and the amount to be paid by the Design-Builder from such progress payment to contractors, subcontractors, and material suppliers, together with a current duly executed waiver of mechanics' and material suppliers' liens from the Design- Builder establishing receipt of payment for satisfaction of the payments requested by the Design-Builder in the current Application for Payment. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder's contractors, subcontractors and material suppliers and charge those payments against the Contract Sum. In the event the amounts paid by Owner to Design-Builder's contractors, subcontractors, and material suppliers exceed the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.

§ .2 Commencing with the second Application for Payment submitted by a Contractor, duly executed so-called "after-the-fact" waivers of mechanics' and material suppliers' liens from all contractors, subcontractors, material suppliers, and, when appropriate, lower-tier subcontractors, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Design- Builder of the current Application for Payment, plus sworn statements from all contractors, subcontractors, material suppliers, and where appropriate, lower tier subcontractors, covering all amounts described in this Section 5.1.4.

§ .3 Such other information, documentation, and materials as the Owner, the Architect, Owner's lender, or the title insurer may require.

§ .4 If at any time there shall be evidence of a lien or claim of lien which, if established, the Owner might become liable, and that is for Work within the scope of this Design-Build Contract or if the Design-Builder shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Design-Builder of any kind or for any reason, whether reduced to judgment or award, the Owner shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between the Owner and the Design-Builder, an amount sufficient to indemnify the Owner against any lien or claim, or to fully satisfy such liability, claim, or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees and expenses. Should any claim or lien develop after all payments are made hereunder, the Design-Builder shall refund to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy or file a bond to discharge a claim of lien or other claim and to deduct all amounts paid to satisfy or discharge a claim of lien or other claim plus Owner's attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.

§ .5 No progress payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the

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Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of « » percent (« » %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of « » percent (« » %);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.2.4.1 If after the Project is deemed fifty percent (50%) complete based upon the Design-Builder's gross project invoices, excluding the value of materials stored off-site, except that the value of the materials stored on-site shall not exceed 20% of the Design-Builder's gross project invoices for the purpose of determining the percent completion of the Project, and the Design-Builder provides Owner the following:

.1 Written verification evidencing 50% completion of the Project; and,

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.2 Written consent of the surety named in the project performance and payment bonds agreeing that the Owner shall not retain any further retainage from periodic payments due to the Design-Builder;

the Owner shall cease holding retainage from future periodic payments if the Owner finds that the Design-Builder is performing satisfactorily, and any nonconforming work identified in writing by the owner (prior to the point of 50% project completion) has been corrected by the Design-Builder and accepted by the Owner. If, however, the Owner determines the Design-Builder's performance is unsatisfactory, the Owner may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, Owner may assess retainage after 50% project completion, even if the Design-Builder has complied with Paragraphs A.1.5.2.4.1.1 and A.1.5.2.4.1.2 (above) and continues to perform satisfactorily as necessary to retain two and one-half percentage (2.5%) total retainage through the completion of the Project.

§ A.1.5.2.4.2 If by or before the Project is deemed 50% complete and one hundred percent (100%) performance has been completed for the following "early" finishing trades: (1) structural steel; (2) piling; (3) caisson; or (4) demolition; and after receipt by the Owner of an approval or certificate from the Architect and Design-Builder that such early finishing work is acceptable and in accordance with the Design-Build Documents, and after the Design-Builder provides Owner the following:

.1 The early finishing trade subcontractor's written request for such payment; and,

.2 Written consent of the surety named in the project performance and payment bonds agreeing that the Owner shall make such early finishing trade payment;

the Owner shall make full payment to the Design-Builder for said 100% completed early finishing trade work less retainage of five-tenths percent (0.5%)(of the early finishing trade contract) upon the later occurrence of (1) 60 days receipt of said early finishing trade subcontractor's written request, or (2) immediately upon receipt of said written consent of the surety.

§ A.1.5.2.4.3 Within 60 days of receipt by owner of (1) a pay request and (2) written consent of the surety, and after Owner has either (1) received a certificate of substantial completion, or (2) received beneficial occupancy or use of the Project (if applicable), the Owner shall pay an amount sufficient to increase total payment to Design-Builder to the Contract Sum, less such amounts as the Owner shall determine in accordance with the Final Payment provisions of A.1.5.5 including up to 250% of the Owner's estimate of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

« »

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take the Cost of the Work as described in Article A.5 of this Amendment;

.2 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

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§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment. Final Payment is further subject to the Owner's prior receipt from the Design-Builder of all as-build drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds related to the Work, and assignments of all guarantees and warranties from contractors, subcontractors, vendors, suppliers, or manufacturers, all as required by the Design-Build Documents.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the

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Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than « » (« ») days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work	Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

« »

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews,

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testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

« »

§ A.3.1.5 Allowances and Contingencies:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

« »

.2 Contingencies

« »

§ A.3.1.6 Design-Builder's assumptions and clarifications:

« »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

« »

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ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.
(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate ($0.00)	Rate (unit of time)

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

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§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner’s prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or

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failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;

.2 Expenses of the Design-Builder's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Section A.5.1;

.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

.5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Section A.5.1; and

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee

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basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

TEMPLATE

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This Amendment to the Agreement entered into as of the day and year first written above.

OWNER

CITY OF DURHAM

ATTEST:

By:

Preaudit Certification:

DESIGN-BUILDER

« [insert appropriate signature block here] »« »

« [insert appropriate notary acknowledgment here] »« »

~~OWNER *(Signature)*~~	~~DESIGN-BUILDER *(Signature)*~~
~~« »« »~~	~~« »« »~~
~~*(Printed name and title)*~~	~~*(Printed name and title)*~~

DRAFT

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TEMPLATE AIA® Document A141™ – 2014 Exhibit B

Insurance and Bonds

Editing Template
CAUTION: Do not remove or otherwise edit Project Data fill-point (Basic Information, Contract Details and Project Team) when using this document

for the following PROJECT:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »« »
« »

THE DESIGN-BUILDER:
(Name, legal status and address)

« »« »
« »

THE AGREEMENT
This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the « » day of « » in the year « » .
(In words, indicate day, month and year.)

TABLE OF ARTICLES

B.1 GENERAL

B.2 DESIGN BUILDER'S INSURANCE AND BONDS

B.3 OWNER'S INSURANCE

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL
The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

TEMPLATE

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§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:
(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ B.2.1.1 Commercial General Liability with policy limits of not less than « » ($ « ») for each occurrence and « » ($ « ») in the aggregate providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
.2 personal injury;
.3 damages because of injury to or destruction of tangible property;
.4 bodily injury or property damage arising out of completed operations; and
.5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

« »

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.

§ B.2.1.7 *[Intentionally Omitted]*~~Pollution Liability covering performance of the Work, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.~~

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

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§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.1.11 Insurance Policies in General. The Design-Builder covenants and agrees that all insurance required to be obtained and maintained by Design-Builder by any provision of the Agreement or elsewhere in the Design-Build Documents (whether or not an additional premium shall be payable in connection therewith) shall:

.1 Be subject to the approval of the Owner solely in order to determine if such insurance complies with the requirements of the Design-Build Documents in all material respects, and shall be in such form as are reasonably acceptable to the Owner, and shall be issued by insurance companies authorized to do business in the State of North Carolina and which have a Best's rating of A (VII) or better;

.2 Be procured, by Design-Builder, at no additional expense to the Owner and to the extent available for periods equal to the term of the construction of the Project but not less than one (1) year; in addition, products/completed operations insurance shall be maintained on the Project for a period not less than six (6) years following Owner's acceptance of the Work and Final Payment to the Design-Builder;

.3 Be evidenced by certificates of such policies delivered to the Owner in accordance with the provisions of this Article 11, together with a letter from Design-Builder and its insurance agent or broker certifying that all requirements of the Design-Build Documents regarding insurance have been satisfied, that all premiums for such insurance have been paid and are current and that all such required insurance is in full force and effect, delivered prior to any materials or equipment being brought to the Sites or the commencement of any Work, whether on the Sites or elsewhere;

.4 Be replaced upon their expiration by new or renewal policies or duplicate copies thereof, as aforesaid, certificates of insurance for which are delivered to the Owner at least thirty (30) days before the expiration of such policies; or immediately upon completion of renewal, whichever is latest.

.5 With respect to builder's risk insurance, contain a provision that the insurer waives its rights to subrogation of any right to recover the amount of any loss from any of the insureds or additional insureds;

.6 Contain a provision that such policies shall not be canceled or modified without at least thirty (30) days' prior written notice to the Owner and notices of cancellation for any reason shall, in addition to other notice requirements of this contract, be provided to:

Finance Director, City of Durham
101 City Hall Plaza
Durham, NC 27701

or to such other party or at any other address as may be designated from time to time by proper written notice given to Owner in accordance with Section 15.3.

.7 With respect to builder's risk insurance, at the option of Owner, as the case may be, coverage may be effected by blanket policies covering the Site and other properties owned or leased by Design-Builder, provided that the policies otherwise comply with the provisions of the Design-Build Documents and allocate to the Sites the specified coverage without possibility of reduction or coinsurance by reason of, or damage to, any other premises named therein, and if the insurance required by the Design-Build Documents shall be effected by any such blanket policies shall, upon request, furnish to the Owner certified copies or duplicate originals of such policies in place of the originals, with schedules thereto attached showing the amount of insurance afforded by such policies applicable to the Site;

.8 Property insurance may provide for a deductible not to exceed One Hundred Thousand Dollars ($100,000) and the City and Owner shall not be responsible for payment of any part of this deductible. Liability insurance and workers' compensation insurance shall provide full coverage,

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which may include deductibles; however, the City and Owner shall not be responsible for payment of any part of such deductibles except with the written approval of the City's Finance Director;

.9 Contain an agreement that valuation of loss (where applicable) is to be on a replacement cost basis; and

.10 Contain a waiver of all coinsurance requirements;

.11 With respect to liability policies, evidence of additional insured coverage shall be as follows:

.1 If by specific endorsement, then each time an insurance certificate is provided, an original of the specific endorsement to effect the coverage must be attached to the certificate;

.2 If by blanket endorsement, the certificate shall state in the appropriate section that the general liability policy contains such endorsement and shall also state that City and Owner are additional insured.

.3 With respect to the commercial general liability insurance, contain a provision that the insurer waives its rights to subrogation or any right to recover the amount of any loss from any of the insureds or additional insureds.

§ B.2.1.12. Cooperation on Insurance Claims.

Design-Builder and the Owner shall cooperate in a prompt manner in connection with the making of any claims and the collection of any insurance monies that may be due in the event of loss, and Design-Builder and the Owner shall execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance monies. The City Manager and City Finance Director are authorized to sign for the City such proofs of loss, release agreements, releases, or other forms necessitated by this paragraph.

§ B.2.1.13 Other Insurance of Design-Builder

Design-Builder shall not carry separate insurance concurrent in form or contributing in the event of loss covered by insurance as required by the Agreement and the Design-Build Documents unless the Owner are included therein as an additional insured or additional insureds as applicable, with loss payable as provided in the Agreement and the Design-Build Documents and unless the net effect of the other insurance is to increase the coverage or improve the financial protection offered without corresponding or off-setting reduction or limitation in the financial protection offered. The Design-Builder immediately shall notify the Owner of the carrying of any such separate insurance and shall cause the policies therefore or certificates thereof to be delivered to the City of Durham and Owner.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
-Attached City of Durham Standard Performance and Payment Bond	

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ B.2.2.2 At the request of the Owner, the Design-Builder shall execute and deliver to the Owner a certification, in a form satisfactory to the Owner, certifying that the amount of the performance bonds and the amount of the payment bonds each have been issued in the principal sum of the Contract Sum of the Project and that the Owner is named as the beneficiary of the Performance Bond.

§ B.2.3. Compliance with Insurance Requirements and OSHA

§ B.2.3.1 Design-Builder shall not violate or permit to be violated any of the conditions or provisions of any insurance policy, and Design-Builder shall promptly so perform and satisfy or cause to be performed and satisfied the requirements of such policies. Design-Builder shall not violate or permit to be violated any OSHA standards or regulations regarding occupational safety and health by Design-Builder, its employees or its Subcontractors. Design-Builder shall indemnify and hold the Owner harmless for any loss, cost, penalty, or fines, in connection with violations of OSHA by Design-Builder, its employees, or its Subcontractors. Design-Builder shall, at its own expense, pay all costs associated with legal defense for the Owner for any reason arising in connection with OSHA

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violations, regardless of the source of the violation or the validity of the allegation, except that Design-Builder shall not be responsible for any OSHA violations committed by Owner's (including City's) employees.

§ B.2.4. No Effect on Indemnity by Design-Builder
§ B.2.4.1 The coverage specified in the Agreement and this Exhibit B is not intended and shall not be construed to limit any liability or indemnity of the Design-Builder under the Design-Build Documents.

ARTICLE B.3 ~~OWNER'S INSURANCE~~*[Intentionally Omitted]*
~~§ B.3.1 Owner's Liability Insurance~~
~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~

~~§ B.3.2 Property Insurance~~
~~§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.~~

~~§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.~~

~~§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

~~§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.~~

~~§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of~~

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~~the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.~~

~~§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.~~

~~§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.~~

~~§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

~~§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.~~

~~§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.~~

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~~§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »

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TEMPLATE AIA® Document A141™ – 2014 Exhibit C

Sustainable Projects

Editing Template
CAUTION: Do not remove or otherwise edit Project Data fill-point (Basic Information, Contract Details and Project Team) when using this document

for the following PROJECT:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »« »
« »

THE DESIGN-BUILDER:
(Name, legal status and address)

« »« »
« »

THE AGREEMENT
This Sustainable Projects Exhibit is part of the accompanying agreement for the Project between the Owner and Design-Builder (hereinafter, the Agreement) dated the « » day of « » in the year « » .
(In words, indicate day, month and year.)

TABLE OF ARTICLES

C.1 GENERAL PROVISIONS

C.2 DESIGN-BUILDER

C.3 OWNER

C.4 CLAIMS AND DISPUTES

C.5 MISCELLANEOUS PROVISIONS

C.6 SPECIAL TERMS AND CONDITIONS

ARTICLE C.1 GENERAL PROVISIONS
§ C.1.1 This Exhibit, in conjunction with the Sustainability Plan and other Design-Build Documents, establishes requirements of the Owner, and the services to be provided by

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the Design-Builder, in order to achieve a Sustainable Objective for ~~when~~ the Project ~~includes a Sustainable Objective~~. Except in the case of a conflict with the Owner's Criteria, where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

§ C.1.2 Definitions

§ C.1.2.1 Sustainable Objective. The Sustainable Objective is the Owner's goal of incorporating Sustainable Measures into the design, construction, maintenance and operations of the Project to achieve a Sustainability Certification or other benefit to the environment, to enhance the health and well-being of building occupants, or to improve energy efficiency. ~~If not set forth in the Owner's Criteria, the Sustainable Objective will be identified in the Sustainability Plan.~~ The Owner has established a Sustainable Objective goal for this Project to achieve a Leadership in Energy and Environmental Design (LEED) certification at the Silver level as defined by the most recent version of the U.S. Green Building Council's (USGBC"s) LEED Green Building Rating System. The Project shall achieve this rating in support of the City of Durham's Comprehensive Plan, Chapter 7 Conservation and Environmental Element, Section 7.1.5b. Energy Savings Designs which states *"The City General Services Department, the County Engineering Department, and the Durham Public Schools shall ensure that new facilities planned by the City and County incorporate energy conservation features in accordance with Leadership in Energy and Environmental Design or other high performance or green building standards*." The Design-Builder shall provide services to achieve LEED silver as part of their Basic Services in accordance with the Owner-Design-Builder Agreement and in collaboration with any third party LEED certification services to be contracted separately by the Owner.

§ C.1.2.2 Sustainable Measure. A Sustainable Measure is a specific design or construction element, or post occupancy use, operation, maintenance or monitoring requirement, that must be completed in order to achieve the Sustainable Objective. The Owner and Design-Builder shall each have responsibility for the Sustainable Measure(s) allocated to them in the Sustainability Plan.

§ C.1.2.3 Sustainability Plan. The Sustainability Plan is a Design-Build Document that identifies and describes: the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews; testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project.

§ C.1.2.4 Sustainability Certification. The Sustainability Certification is the initial third-party certification of sustainable design, construction, or environmental or energy performance which for this Project will be the LEED Green Building Rating System.~~, such as LEED®, Green Globes™, Energy Star or another rating or certification system, that may be designated as the Sustainable Objective or part of the Sustainable Objective for the Project~~. The term Sustainability Certification shall not apply to any recertification or certification occurring subsequent to the initial certification. The Design-Builder shall review applicable criteria for achieving the targeted level of LEED Certification identified in Section 1.2.1 and shall consult with the Owner with regard to such requirements. The Design-Builder shall attend meetings during the Design and Construction Phases, communicate with the Owner and members of the Project team, and issue progress reports as appropriate to coordinate the LEED Certification process for the Project.

§ C.1.2.5 Sustainability Documentation. The Sustainability Documentation includes all documentation related to the Sustainable Objective, or to a specific Sustainable Measure, that the Owner or Design-Builder is required to prepare in accordance with the Design-Build Documents. Responsibility for preparation of specific portions of the Sustainability Documentation will be allocated among the Owner and Design-Builder in the Sustainability Plan and may include documentation required by the Certifying Authority.

§ C.1.2.6 Certifying Authority. The Certifying Authority for this project will be the Green Building Certification Institute (GBCI) of the U.S. Green Building Council (USGBC)~~is the entity that establishes criteria for achievement of a Sustainability Certification and is authorized to grant or deny a Sustainability Certification~~.

§ C.1.2.7 LEED Certification Plan

§ C.1.2.7.1 Following the Sustainability/LEED Workshop described in Section C.2.1.3, the Design-Builder shall prepare a LEED Certification Plan based on the targeted LEED credits. The LEED Certification Plan shall consist of, at a minimum, the appropriate Green Building Rating System Project Checklist indicating the targeted LEED credits; the Owner's LEED Certification goal; information describing the Owner's, the Owner's consultants', the

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Design-Builder's responsibilities for each LEED credit; and a list of the LEED Documentation, required from each of them. The Design-Builder shall submit the LEED Certification Plan to the Owner for the Owner's approval.

§ C.1.2.8 Following the Owner's approval of the LEED Certification Plan, the Design-Builder shall provide the services specifically identified as the responsibility of the Design-Builder in the LEED Certification Plan and any approved changes to the LEED Certification Plan and coordinate any services and documentation required by any third party LEED certification consultants contracted by the Owner. If the LEED Certification Plan requires the Design-Builder to provide services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project, the Design-Builder shall notice the Owner with reasonable promptness and shall not proceed to provide those services until the Design-Builder receives the Owner's written authorization.

§C.1 2.79Subject to Section C.3.1 or Section C.3.2, the Design-Builder shall make adjustments to the LEED Certification Plan, as the design and construction of the Project progresses, to reflect any changes approved by the Owner.

ARTICLE C.2 DESIGN-BUILDER

§ C.2.1 Scope of Design-Builder's Sustainability Services Prior to Execution of the Design-Build Amendment

§ C.2.1.1 The Design-Builder shall provide the Sustainability Services described in this Section C.2.1 in conjunction with the Work described in Article 4 of the Agreement.

§ C.2.1.2 Sustainability Certification Agreements. ~~If the anticipated Sustainable Objective set forth in the Owner's Criteria includes a Sustainability Certification~~in support of the LEED goals for the Project, the Design-Builder shall provide the Owner with copies of all agreements required by the Certifying Authority to register the Project and pursue the Sustainability Certification. The Owner and Design-Builder will review and confirm that the terms of those agreements are acceptable to the Owner before moving forward with the Sustainability Services under this Article C.2. The Owner agrees to execute all documents required by the Certifying Authority to be executed by the Owner; including any documentation required to establish the authority of the Design-Builder, the Architect, Contractor, or a Consultant, as an agent of the Owner for the limited purpose of pursuing the Sustainability Certification.

§ C.2.1.3 Preliminary Design

§ C.2.1.3.1 Sustainability LEED Workshop. Prior to the conclusion of Preliminary Design, the Design-Builder, and as necessary the Design-Builder's Architect, Contractors, and Consultants, shall conduct a Sustainability Workshop with the Owner and, as requested by the Design-Builder, with the Owner's consultants, during which the participants will: review and discuss a LEED Certification Plan to include a review of the LEED Green Building Rating System; examine LEED credits and certification level to be targeted, utilizing the appropriate Green Building Rating System Project Checklist, and identify potential LEED points associated with those credits; examine strategies for implementation of the targeted LEED credits; and discuss the potential impact of the targeted LEED credits on the Project schedule and the Owner's program and budget. ~~potential Sustainability Certifications; establish the Sustainable Objective; discuss potential Sustainable Measures to be targeted; examine strategies for implementation of the Sustainable Measures; and discuss the potential impact of the Sustainable Measures on the Project schedule and on the Owner's program and budget.~~

§ C.2.1.3.2 Sustainability Plan

§ C.2.1.3.2.1 Following the Sustainability Workshop, the Design-Builder shall prepare a Sustainability Plan based on the Sustainable Objective and targeted Sustainable Measures.

§ C.2.1.3.2.2 The Design-Builder shall submit the proposed Sustainability Plan to the Owner as part of the Design-Builder's submission of the Preliminary Design in accordance with Section 4.3.1 of the Agreement. The Sustainability Plan shall not change the Owner's Criteria unless the Owner and Design-Builder execute a Modification reflecting any such change.

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§ C.2.1.4 Design-Builder's Proposal

§ C.2.1.4.1 As part of the Design-Builder's submission of the Design-Builder's Proposal, in accordance with Section 4.4.1 of the Agreement, the Design-Builder shall advise the Owner of any adjustments to the Sustainability Plan.

§ C.2.1.4.2 If the Owner and Design-Builder agree upon the Design-Builder's Proposal, including the Sustainability Plan, the Owner and Design-Builder shall include the Sustainability Plan in the Design-Build Amendment executed in accordance with Section 4.4.3 of the Agreement.

§ C.2.2 Work Following Execution of the Design-Build Amendment

§ C.2.2.1 The Design-Builder shall perform those Sustainable Measures identified as the responsibility of the Design-Builder in the approved Sustainability Plan and any approved changes to the Sustainability Plan.

§ C.2.2.2 Construction Documents. The Construction Documents prepared by the Design-Builder shall incorporate the Sustainable Measures identified in the Sustainability Plan, as appropriate.

§ C.2.2.3 As part of the Sustainable Measures, the Work may require the use of materials and equipment that have had limited testing or verification of performance. The Design-Builder may be unable to determine whether the materials or equipment will perform as represented by the manufacturer or supplier. The Design-Builder shall discuss with the Owner the proposed use of such materials or equipment, and potential effects on the Sustainable Objective that may occur if the materials or equipment fail to perform in accordance with the manufacturer's or supplier's representations. The Owner will render a written decision regarding the use of such materials or equipment in a timely manner. In the event the Owner elects to proceed with the use of such materials or equipment, the Design-Builder shall be permitted to rely on the manufacturer's or supplier's representations and shall not be responsible for any damages arising from failure of the material or equipment to perform in accordance with the manufacturer's or supplier's representations.

§ C.2.3 Construction Phase

§ C.2.3.1 The Design-Builder shall meet with the Owner to discuss alternatives in the event the Owner recognizes a condition that will affect achievement of a Sustainable Measure or achievement of the Sustainable Objective. If any condition is discovered by, or made known to, the Design-Builder that will adversely affect the Design-Builder's achievement of a Sustainable Measure for which the Design-Builder is responsible pursuant to the Sustainability Plan, the Design-Builder will promptly provide notice to the Owner and meet with the Owner to discuss alternatives to remedy the condition.

§ C.2.3.2 The Design-Builder shall be responsible for preparing and completing the Sustainability Documentation required by the Design-Build Documents, including any Sustainability Documentation required to be submitted after Substantial Completion.

§ C.2.4 Waste Management

The Design-Builder, in accordance with the Design-Build Documents, shall prepare and submit to the Owner a construction waste management and disposal plan setting forth the procedures and processes for salvaging, recycling or disposing of construction waste generated from the Project. The Design-Builder shall recycle, reuse, remove or dispose of materials as required by the Design-Build Documents.

§ C.2.5 Substantial Completion

Verification that the Project has achieved the Sustainable Objective, or the actual achievement of the Sustainable Objective, shall not be a condition precedent to issuance of a Certificate of Substantial Completion in accordance with Section 9.8.5 of the Agreement. Except for that portion of the Sustainability Documentation that by its nature must be provided after Substantial Completion, the Design-Builder shall submit to the Owner the Sustainability Documentation required from the Design-Builder by the Design-Build Documents no later than the date of Substantial Completion. Verification that the Project has achieved LEED Certification or the actual achievement of LEED Certification shall not be a condition precedent to the issuance of a Certificate of Substantial Completion.

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§ C.2.6 Final Completion

§ C.2.6.1 Verification that the Project has achieved the Sustainable Objective, or the actual achievement of the Sustainable Objective, shall not be a condition precedent to issuance of the final Certificate for Payment in accordance with Section 9.10.1 of the Agreement.

§ C.2.6.2 In accordance with Section 9.10.2 of the Agreement, all Sustainability Documentation required from the Design-Builder by the Design-Build Documents shall be submitted to the Owner before final payment or any remaining retained percentage shall become due.

§ C.2.7 Project Registration and Submissions of Sustainability Documentation to the Certifying Authority

§ C.2.7.1 ~~If the Sustainable Objective includes a Sustainability Certification, the~~ The Design-Builder shall perform the services set forth in this Section C.2.7.

§ C.2.7.2 The Design-Builder shall register the Project with the Certifying Authority. Registration fees and any other fees charged by the Certifying Authority, and paid by the Design-Builder, shall be a reimbursable expense.

§ C.2.7.3 The Design-Builder shall collect, organize and manage the ~~Sustainability Documentation; and submit~~ documentation, calculations and submittals necessary to meet the LEED Certification requirements (LEED Documentation) from the Owner and the Owner's consultants , and organize and manage the LEED Documentation as necessary for the LEED Certification process. The Design-Builder shall also coordinate the documentation and submission of the Sustainability Documentation to the Certifying Authority as required for the ~~Sustainability~~ LEED Certification process.

§ C.2.7.4 Subject to Section C.3.4 and provided the Design-Builder receives timely notice from the Owner or Certifying Authority, the Design-Builder shall prepare and file necessary documentation with the Certifying Authority to appeal a ruling or other interpretation denying a requirement, prerequisite, credit or point necessary to achieve the Sustainability Certification.

§ C.2.7.5 The Design-Builder shall prepare and submit the application for certification of the Project to the Certifying Authority, including any required supporting documentation, in accordance with the Sustainability Plan.

§ C.2.7.6 The Design-Builder shall prepare responses to, and submit additional documentation required by, comments or questions received from the Certifying Authority and/or the third party LEED Certification consultant.

§ C.2.7.7 Any certification, declaration or affirmation the Design-Builder makes to the Certifying Authority shall not constitute a warranty or guarantee to the Owner or the Owner's contractors or consultants.

§ C.2.8 Copyrights and Licenses

§ C.2.8.1 Solely for the purpose of obtaining or maintaining the Sustainability Certification, the Design-Builder grants to the Owner a nonexclusive license to submit the Design-Builder's Instruments of Service, directly or through third parties, to the Certifying Authority to comply with the requirements imposed by the Certifying Authority and further grants the Owner a nonexclusive license to allow the Certifying Authority to publish the Instruments of Service in accordance with the policies and agreements required by the Certifying Authority. The licenses granted in this Section C.2.8 are valid only if the Owner substantially performs its obligations under the Agreement, including prompt payment of all sums when due.

§ C.2.8.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project and to allow the Certifying Authority to publish the Instruments of Service, or any other information, in accordance with the policies and agreements required by the Certifying Authority.

§ C.2.8.3 Submission or distribution of Instruments of Service to meet requirements of a Certifying Authority, in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder or those of the Architect, Consultants and Contractors.

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ARTICLE C.3 OWNER

§ C.3.1 The Owner shall perform those Sustainable Measures identified as the responsibility of the Owner in the Sustainability Plan, or as otherwise required by the Design-Build Documents. The Owner shall require that each of its separate contractors and consultants performs the separate contractor's or consultant's services in accordance with the Sustainability Plan.

§ C.3.2 The Owner shall provide to the Design-Builder information requested by the Design-Builder that is reasonably relevant and necessary for achievement of the Sustainable Objective.

§ C.3.3 Unless the Design-Build Documents provide otherwise, the Owner shall provide the services of a commissioning agent who shall be responsible for commissioning of the Project.

§ C.3.4 The Owner shall be responsible for preparing, filing, and prosecuting appeals to the Certifying Authority, or taking any other actions determined by the Owner to be necessary or desirable, arising from the revocation or reduction of an awarded Sustainability Certification.

§ C.3.5 The Owner shall comply with the requirements of the Certifying Authority as they relate to the ownership, operation and maintenance of the Project both during construction and after completion of the Project.

ARTICLE C.4 CLAIMS AND DISPUTES

Waiver of Consequential Damages Relating to the Sustainable Objective. The Owner and Design-Builder waive claims against each other for consequential damages resulting from the failure of the Project to achieve the Sustainable Objective or one or more of the Sustainable Measures, including unachieved energy savings, unintended operational expenses, lost financial or tax incentives, or unachieved gains in worker productivity.

ARTICLE C.5 MISCELLANEOUS PROVISIONS

The Owner and Design-Builder acknowledge that achieving the Sustainable Objective is dependent on many factors beyond their control, such as the Owner's use and operation of the Project or the work or services provided by the Owner's separate contractors or consultants; or interpretation of credit requirements by a Certifying Authority. Accordingly, the Design-Builder does not warrant or guarantee that the Project will achieve the Sustainable Objective.

ARTICLE C.6 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Sustainable Projects Exhibit, if any, are as follows:

« »

FINAL

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Appendix J – Site Assessment Information

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Phase I Environmental Site Assessment
Clayton Property
5417 Leesville Road
Durham, NC 27703

1.0 EXECUTIVE SUMMARY

Froehling & Robertson, Inc. (F&R) performed a Phase I Environmental Site Assessment (ESA) of the Clayton Property located at 5417 Leesville Road near Durham, NC (the Property). The following is a summary of our findings and is not intended to replace more detailed information contained elsewhere in this report.

The Property consists of a 3.7-acre, irregular-shaped area that is part of a larger parent parcel that contains a total of 4.7-acres. The Property consists of wooded and cleared land and is situated within a rural suburban land use area near Durham in Durham County, NC. Structures were not noted on the Property; However, a residence is present on the parent parcel to the west of the Property. The Property is bound to the north by residential and undeveloped wooded land; to the east by Doc Nichols Road, beyond which is residential development; to the south by Leesville Road, beyond which is residential and agricultural land.

Historically, the Property was agricultural and cleared land from at least 1955 until 2005, with the addition of some wooded areas appearing on the northern and southern portions of the site after 1988. Since 2005, the site has been mostly wooded land with a small area of cleared land present on the western portion of the Property.

Based upon F&R's review of the federal, state and tribal environmental database report prepared by Environmental Data Resources, Inc. (EDR), environmental incidents or listed facilities were not identified for the Property. Additionally, other facilities or incidents were not listed within the ASTM search distances in the federal and state databases reviewed by EDR.

F&R has performed a Phase I Environmental Site Assessment in general conformance with the scope and limitations of ASTM Practice E 1527-05 of the Clayton Property located at 5417 Leesville Road near Durham, NC, the Property. Any exceptions to, or deletions from, this practice are described in Section 9.0 of this report. This assessment has not revealed evidence of RECs in association with the Property.

2.0 INTRODUCTION

2.1 Purpose

The purpose of this Phase I ESA was to evaluate the Property and current on-site activities with regard to recognized environmental conditions (RECs), historical recognized environmental conditions (HRECs), and de minimis conditions associated with the Property. A REC is described by the ASTM Standard as: *the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property*. Whereas, an HREC is described by the ASTM Standard as: *an environmental condition, which in the past would have been considered a recognized environmental condition, but which is not currently a recognized environmental condition because the site has been remediated or will not currently impact the property*. According to the Standard, *de minimis conditions generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies*.

2.2 Detailed Scope of Services

F&R has performed a Phase I Environmental Site Assessment in general accordance with ASTM E 1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. Any deletions and/or additional services which deviate from this standard are described within Section 9.0. This standard does not include investigation into all areas of local, state and federal environmental requirements. These requirements were not addressed within this report and F&R is not responsible for other legal obligations for non-compliance with regulations not addressed specifically herein.

2.3 Significant Assumptions

Our findings and opinions are based upon information provided to us by others and our site observations, and are subject to and limited by the terms and conditions of F&R's Agreement for Environmental Services. We have not verified the completeness or accuracy of the information provided by others, unless noted otherwise. Our observations were based upon conditions readily visible at the site at the time of our visit, and did not include services typically performed during an Environmental Compliance Audit or a Phase II Environmental Site Assessment. If additional information becomes available which may affect our conclusions and recommendations, we request the opportunity to review the information, and reserve the right to modify our report, as warranted.

2.4 Limitations and Exceptions

F&R, by virtue of providing the services described herein, does not assume the responsibility of the person(s) in charge of the site, or otherwise undertake responsibility for reporting to any local, state, or federal public agencies any conditions at the site which may present a potential concern to public health, safety, or the environment. It is F&R's understanding that the client will notify appropriate regulatory agencies as required.

F&R has made appropriate inquiry and conducted a visual investigation in general accordance with the standard to determine the existence of underground storage tank usage (past and present) at the Property. F&R cannot entirely preclude the possibility that underground tanks, associated piping, and/or undetected releases may be present and/or may have existed at the site without a subsurface investigation, which is not a part of the scope of work for this project.

2.5 Special Terms and Conditions

Special terms and conditions in relation to this project have been addressed throughout various sections detailing the specifications for which the assessment has been completed.

2.6 User Reliance

This report has been prepared for the exclusive use of the City of Durham and Pulte Homes on this specific project. These services have been provided in accordance with generally accepted environmental practices. No other warranty, expressed, or implied, is made. The contents of this report should not be construed in any way to indicate F&R's recommendation to purchase, sell, or develop the Property.

3.0 SITE DESCRIPTION

3.1 Location and Legal Description

The Property is located along the north side of Leesville Road, at the northwest corner of the intersection with Doc Nichols Road and is a portion of a larger parent parcel that is addressed at 5417 Leesville Road, Durham, Durham County, NC. According to the Durham County Real Estate Assessor's Office, the parcel reference number is 193288 and the NC PIN is 0769-01-07-2546. In addition, according to the Durham County Zoning Office, the Property is zoned for Residential Use. Please see Appendix A for the Site Vicinity Map.

3.2 Site and Vicinity Characteristics

The Property consists of a 3.7-acre, irregular-shaped parcel consisting of wooded and cleared land with no buildings present. The Property is located within a rural area of residential development and is part of a larger parent parcel. Please see Appendix A for the Site Observation Map.

3.3 Current Use of the Property

The Property currently consists of mostly wooded land with a small area of cleared land present on the western portion of the site; structures were not noted on the Property. The Property contains 3.7-acres and is part of a larger parent parcel that contains a total of 4.7-acres. Additionally, a residential structure is present on the parent parcel to the west of the Property.

3.4 Description of Structures, Roads, Other Improvements

The Property is accessed via Leesville Road to the south and Doc Nichols Road to the east. Structures, improved roads, or other significant improvements were not observed on the Property. A residential structure is present on the parent parcel. The residence is a one-story brick structure that contains 1,334 square feet and was constructed in 1954. Interior access to the parent parcel residence was not provided as part of this assessment.

3.5 Current Uses of Adjacent Properties

The Property is bound to the north by residential and undeveloped wooded land; to the east by Doc Nichols Road, beyond which is residential development; to the south by Leesville Road, beyond which is residential and agricultural land. Please reference Appendix A for the Property Observation Map.

4.0 USER PROVIDED INFORMATION

In accordance with the ASTM Standard, the Client is responsible for providing the following information. Randy King of Pulte Homes provided F&R personnel with the site location and site contact information. F&R also requested information within the following sections.

4.1 Title Records

Current and/or prior ownership information was not provided by the Client and a review of Chain of Title Information was not performed as a part of this assessment.

4.2 Environmental Liens, Activity, and/or Use Limitations

Identification of activity use limitations and/or environmental conditions at the site was not provided.

4.3 Specialized Knowledge

Specialized knowledge of environmental issues was not provided to F&R.

4.4 Valuation Reduction for Environmental Issues

Information concerning valuation reduction for environmental issues was not provided by the Client.

4.5 Owner, Property Manager, and Occupant Information

The current property owner was identified as WOF LLC and the property manager was identified as Glenn Futrell.

4.6 Reason for Performing Phase I Environmental Site Assessment

The Phase I Environmental Site Assessment is being performed to satisfy environmental inquiry into the site.

4.7 Other

Additional information was not provided by the user.

5.0 RECORDS REVIEW

5.1 Standard Environmental Record Sources

Federal, state and tribal environmental databases and records were reviewed in an effort to determine whether environmental incidents have been reported at the site and to locate properties with environmental liabilities in the vicinity of the site. A detailed summary of federal, state and tribal databases prepared by Environmental Data Resources, Inc. (EDR) is presented in Appendix E. Federal and state regulatory databases have been researched and reported in accordance with the approximate minimum search distances specified by ASTM E 1527-05. The table below depicts the listed facilities and/or incidents identified in the database search:

5.1.1 Federal Regulatory Agencies

The Property or adjacent properties were not identified on the federal databases searched. Additionally, federally listed sites were not identified within the ASTM search distance.

5.1.2 State and Tribal Regulatory Agencies

The Property or adjacent properties were not identified on the state or tribal databases searched. Additionally, state or tribal listed properties were not identified within the ASTM search distance.

5.1.3 Additional Environmental Record Sources

F&R contacted the local fire, health, and building departments for additional information on the Property. Information obtained is included within Section 7.2 of this report.

5.2 Physical Setting Sources

The United States Geological Survey (USGS), "SE Durham, NC" Quadrangle 7.5 minute series topographic map was reviewed during the preparation of this report. This map was published by the USGS in 1982. According to the contour lines on the topographic map, elevations on the Property range from approximately 450 feet above mean sea level (AMSL) to 440 feet AMSL on the southern portion of the Property. The contour lines in the area indicate the Property generally slopes to the south. The area of the Property is colored green and white, which indicates wooded and agricultural or cleared land, respectively.

Surface waters are not depicted as present on the Property. Based upon regional topography as depicted on the USGS topographic map, the direction of shallow groundwater flow in the vicinity of the site is inferred to be to the south toward an unnamed tributary of Little Brier Creek. However, without performing a hydrogeologic evaluation, the actual direction of groundwater flow cannot be determined.

5.3 Property Historical Use Information

Based upon F&R's review of historical sources and interviews, the Property was agricultural and cleared land from at least 1955 until 2005, with the addition of some wooded areas appearing on the northern and southern portions of the site after 1988. Since 2005, the site has been mostly wooded land with a small area of cleared land present on the western portion of the Property.

5.3.1 Aerial Photographs

F&R reviewed aerial photographs from Durham County GIS and Durham County NRCS to determine the historical usage of the Property. Aerial photographs from 1955, 1972, 1988, 1993, 1999, 2005, and 2010 were reviewed. The findings are presented in the following table:

Year	Site
1955 and 1972	Mostly agricultural land with some wooded areas on the northwest corner of the site
1988, 1993, 1999, and 2005	Appears similar to the 1972 aerial with the addition of wooded land along the northern and southern portions of the site
2010	Appears similar to the 2005 aerial with the addition of scrubby wooded areas now visible on the central portion of the site

5.3.2 City Directories

City directories for this portion of Durham County were not published.

5.3.3 Chain of Title

Based upon the Scope of Work for this project, F&R was not contracted to provide a chain of title for this project. Under the requirements of ASTM 1527-05 it is the User's responsibility to provide a title search or negotiate a contract for the title search through F&R.

5.3.4 Sanborn Fire Insurance Maps

According to EDR, Sanborn Fire Insurance Maps were not available for the Property. The EDR Sanborn Map "No Coverage Letter" is included in Appendix C of this report.

5.3.5 Historical Topographic Maps

Property usage was determined utilizing other historic resources; historical topographic maps were not reviewed for this assessment.

5.3.6 Additional Historical Sources

Additional historical sources were not utilized during the course of this assessment.

5.4 Adjoining Properties Historical Use Information

Based upon F&R's review of historical sources and interviews, the adjacent properties are currently utilized for residential and agricultural purposes and have been since at least the 1950s and presumably earlier.

5.4.1 Aerial Photographs

F&R reviewed aerial photographs from Durham County GIS and Durham County NRCS to determine the historical usage of the Property. Aerial photographs from 1955, 1972, 1988, 1993, 1999, 2005, and 2010 were reviewed. The findings are presented in the following table:

Year	North	South	East	West
1955	Agricultural land with scattered residential areas	Leesville Road with agricultural land and scattered residential areas	Doc Nichols Road with residential and cleared land	Cleared and agricultural land with the parent parcel residence visible
1972	Agricultural and wooded land with scattered residential areas	Leesville Road with agricultural land and scattered residential areas	Doc Nichols Road with residential and cleared land	Residential, cleared, and agricultural land
1988, 1993, 1999, 2005, and 2010	Wooded land with scattered residential areas	Similar to 1972 with additional residential and wooded land present	Similar to 1972	Similar to 1972

5.4.2 City Directories

City directories for this portion of Durham County were not published.

5.4.3 Sanborn Fire Insurance Maps

According to EDR, Sanborn Fire Insurance Maps were not available for the vicinity of the Property. The EDR Sanborn Map "No Coverage Letter" is included in Appendix C of this report.

5.4.4 Historic Topographic Maps

Adjacent property usage was determined utilizing other historic resources; historical topographic maps were not reviewed for this assessment.

6.0 SITE RECONNAISSANCE

6.1 Methodology and Limiting Conditions

Mr. Elias Ruhl of F&R performed a site reconnaissance on August 15, 2013 to review current site conditions. F&R personnel walked the Property and boundaries on-site and viewed adjacent parcels. F&R was not accompanied on the Property reconnaissance.

6.2 General Site Setting/Characteristics

The Property is located within a rural residential land use area. Properties located in the vicinity of the site include scattered residential development as well as agricultural and wooded land. Please see Appendix A for the Site Observation Map.

6.3 Potential Environmental Conditions

6.3.1 Hazardous Materials Storage

Hazardous material storage was not observed on the Property. Additionally, obvious evidence of hazardous materials or regulated substances being improperly stored, dumped, or spilled on the Property (e.g., surface staining, stressed or dead vegetation, unusual odors, etc.) was not observed.

6.3.2 Polychlorinated Biphenyls (PCBs)

Electrical equipment manufactured prior to 1979 has the potential for containing PCBs and therefore subject to regulation by the United States Environmental Protection Agency (EPA). If a transformer is labeled with a blue or black dot, this indicates that the transformer has been tested for the presence of PCBs and contained concentrations of PCBs less than 50 parts per million (ppm), or it was manufactured after 1978.

Electrical transformers were not observed on the Property during F&R's site reconnaissance.

6.3.3 Storage Tanks or Pipelines

Obvious evidence of aboveground storage tanks (ASTs), underground storage tanks (USTs) or pipelines indicative of USTs was not observed on-site or reported during interviews.

An AST and vent/fill pipes indicative of a UST were noted along the northern side of the residential structure on the parent parcel. Based on the observed topography and the distance of the tanks from the boundary of the Property, the AST and presumed UST on the parent parcel are not anticipated to be an environmental concern on the Property.

6.3.4 Drinking Water/Sewer System

The Property is currently undeveloped, and a water or sewer system is reportedly not present on-site. However, the residence on the parent parcel is serviced with municipal drinking water from Durham County; the residence on the parent parcel relies upon an on-site septic system.

6.3.5 Wastewater

F&R did not observe an industrial wastewater system on the Property.

6.3.6 Pits, Ponds, And Lagoons

F&R did not observe pits, ponds, or lagoons on site.

6.3.7 Additional Observations

Additional items of concern were not observed on the Property.

7.0 INTERVIEWS

F&R personnel interviewed various persons familiar with the Property and surrounding properties. Details are as follows.

7.1 Interview with Site Owner/Manager

F&R interviewed Mr. Clarence Edward Clayton, the current owner of the Property. Mr. Clayton stated that he has been familiar with the Property for 73 years and that he has lived on or near the site since he was born. He indicated that he is unaware of buildings being present on the site currently or in the past and that the land was previously a portion of an approximately 100-acre farm that was previously owned by his father. He noted that the Property has historically been utilized as agricultural and that he is unaware of ASTs or USTs located on the Property currently or in the past. Mr.Clayton indicated he is unaware of incidents involving hazardous materials or petroleum products that have been improperly stored, spilled or leaked at the Property and that he is unaware of foreign fill material on the Property currently or in the past. He also stated he is unaware of other environmental concerns associated with the Property or adjacent properties.

Mr. Clayton did note the the residence that is present on the parent parcel is currently heated with a fuel oil furnace and has been since the residence was constructed in 1954. An AST located along the north side of the residence is

currently utilized to store the fuel oil an UST was used many years ago. He recalled that the UST was pumped out when it was taken out of service. Mr. Clayton also indicated that he is unaware of leaks or spills associated with the AST or UST. Additionally, he clarified that the residence and areas surrounding it are not being sold and should not be included as part of the Property for this assessment.

7.2 Interviews with Local Government Officials

Fire Officials

F&R contacted the Durham County Emergency Service Operations Office to request information regarding responses of the respective departments to emergency situations that include fires, chemical spills, hazardous material releases (HAZMAT team responses), and incidents of environmental concern on or in the immediate vicinity of the Property. F&R has not received a response as of the issuance of this report; however, if pertinent information is received, F&R will forward it to the client.

Building Department

F&R contacted the Durham County Building Department to request information on USTs or environmental concerns on the Property. F&R has not received a response as of the issuance of this report; however, if pertinent information is received, F&R will forward it to the client.

Health Department

F&R contacted the Durham County Health Department to request information on groundwater or drinking water well contamination in the vicinity of the Property. F&R has not received a response as of the issuance of this report; however, if pertinent information is received, F&R will forward it to the client.

7.3 Interview with Others

Additional interviews were not conducted during the course of this assessment.

8.0 FINDINGS AND CONCLUSIONS

8.1 Findings

During the course of this Phase I ESA, recognized environmental conditions (RECs), historical recognized environmental conditions (HRECs), de minimis conditions, and items of environmental concern were not identified in association with the Property.

8.1.1 On-Site Recognized Environmental Conditions

This assessment did not identify on- site RECs.

8.1.2 Off-Site Recognized Environmental Conditions

This assessment did not identify off- site RECs.

8.1.3 Historical Recognized Environmental Conditions

This assessment did not identify HRECs associated with the Property.

8.1.4 De Minimis Conditions or Items of Environmental Concern

This assessment did not identify on-site de minimis conditions or items of environmental concern.

8.2 Opinion

It is F&R's opinion that on-site conditions, observations, and research did not reveal evidence of on-site or off-site RECs, HRECs, de minimis conditions, or items of environmental concern.

8.3 Conclusions and Recommendations

F&R has performed a Phase I Environmental Site Assessment in general conformance with the scope and limitations of ASTM Practice E 1527-05 of the Clayton Property located at 5417 Leesville Road near Durham, NC, the Property. Any exceptions to, or deletions from, this practice are described in Section 9.0 of this report. This assessment has not revealed evidence of RECs in association with the Property.

9.0 DEVIATIONS

There were no significant deviations from the proposed scope of work; however historical research performed was not per the ASTM Standard. ASTM requires research to determine historical property use back to first developed use or 1940, which ever is earlier. Through the methods utilized, F&R could not provide these research tools. However, it is apparent the site was agricultural land prior to its current use. This data failure is not critical, and does not alter the conclusions or recommendations of this assessment.

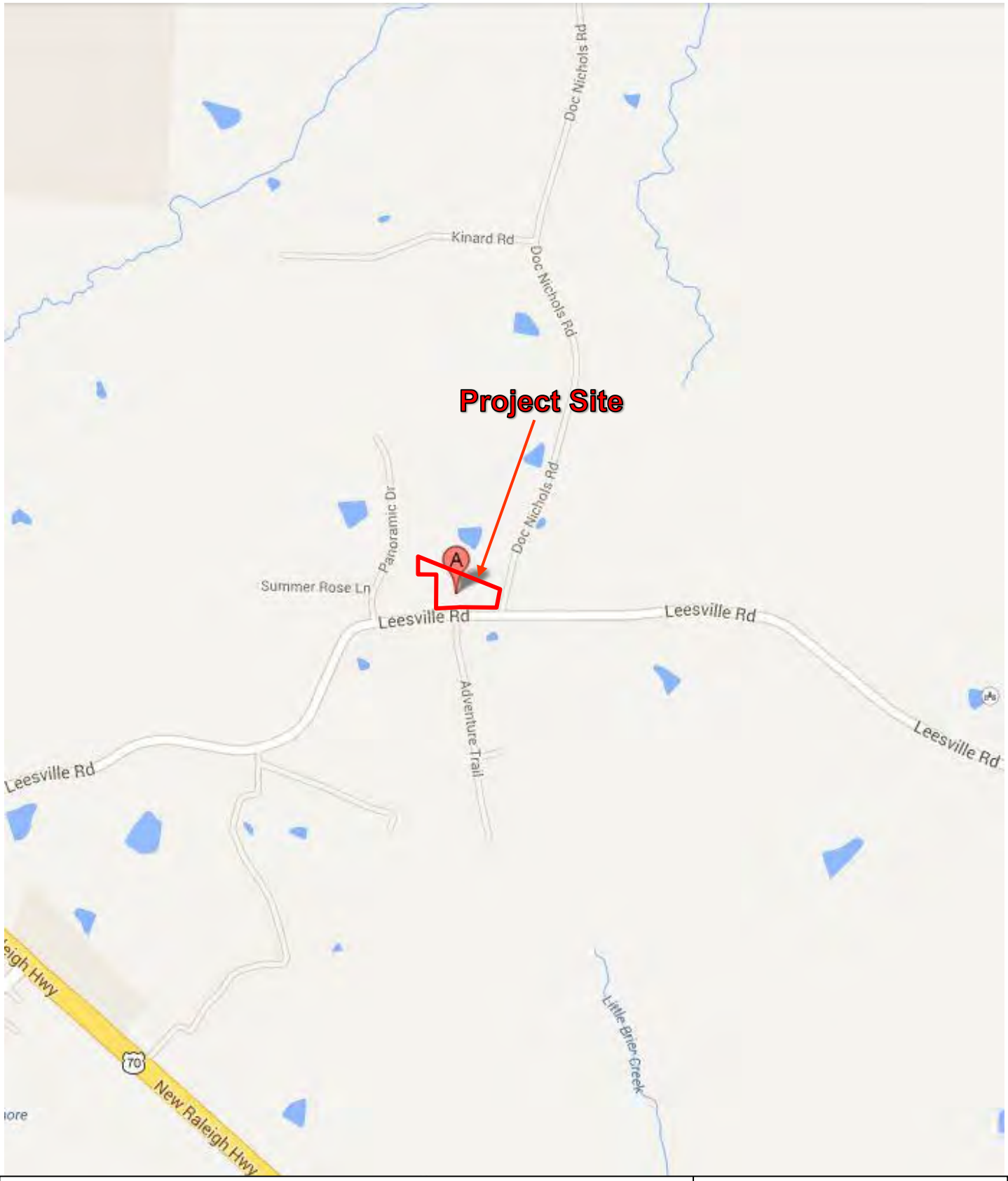
10.0 ADDITIONAL SERVICES

Additional services were not requested for this report.

11.0 REFERENCES

F&R utilized the following references in preparation of this report:

- Environmental Data Resources (EDR) Regulatory Report
- Environmental Data Resources (EDR) Sanborn Map Report
- Durham County GIS and USDA Natural Resource Conservation Service (NRCS) Aerial Photographs
- USGS 7.5 minute Topographic Map "SE Durham, North Carolina" dated 1982
- Durham County Parcel Maps available at the Wake County Assessor's Office Website
- Durham County Register of Deeds Office
- Polk City Directories



PROPERTY LOCATION MAP			North ▲	
SINCE F&R 1881	**FROEHLING & ROBERTSON, INC.** ENGINEERING • ENVIRONMENTAL • GEOTECHNICAL 310 Hubert Street Raleigh, North Carolina 27603-2302 I USA T 919.828.3441 I F 919.828.5751	Client:	Pulte Homes	
		Project:	Clayton Property	
		Location:	Durham, Durham County, NC	
		F&R Project No:	66R-0106	
		Source:	Google Maps	
		Date: August 2013	Scale Not Known	Figure #1

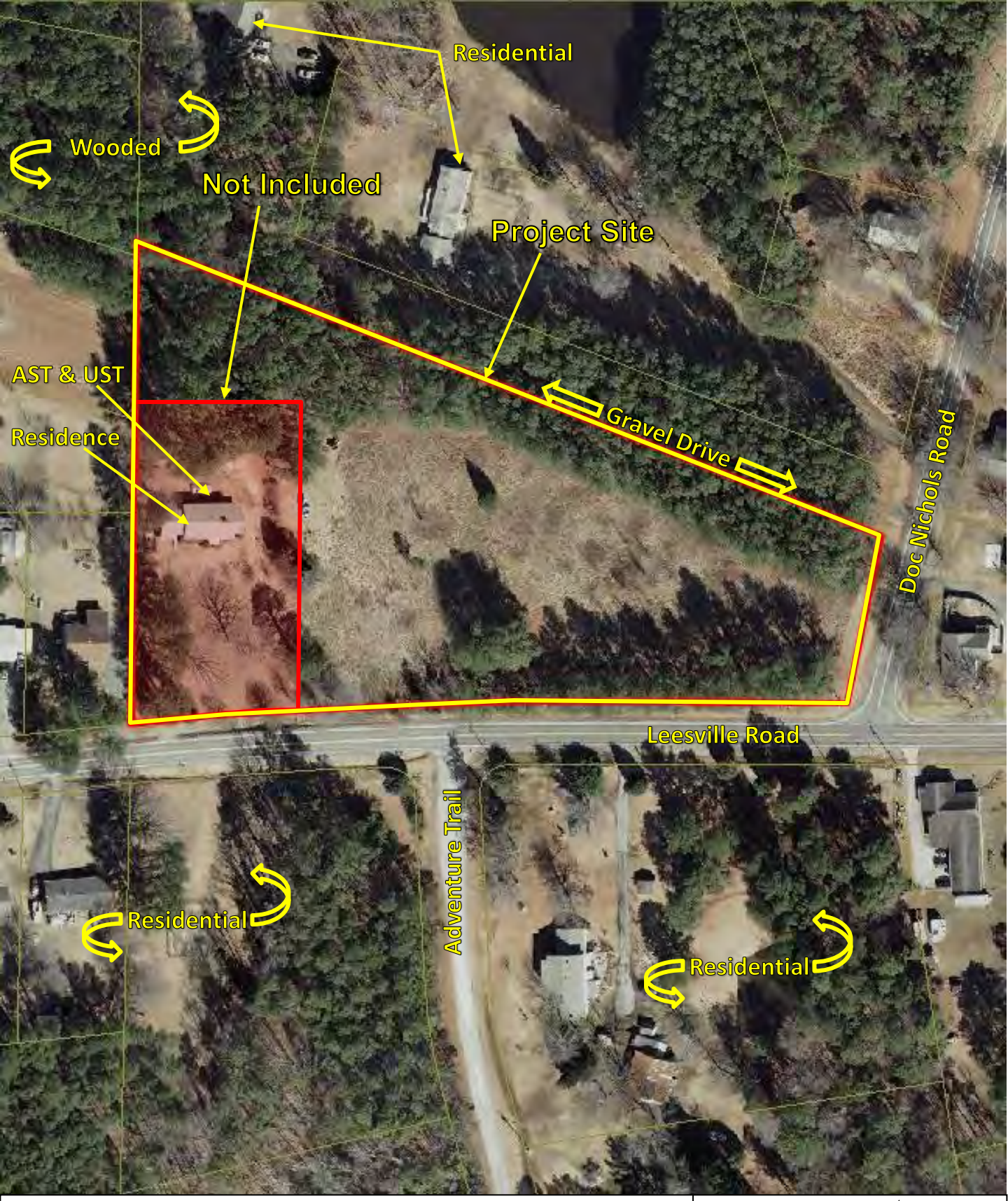
PROPERTY VICINITY MAP

North

FROEHLING & ROBERTSON, INC.
ENGINEERING • ENVIRONMENTAL • GEOTECHNICAL
310 Hubert Street
Raleigh, North Carolina 27603-2302 I USA
T 919.828.3441 I F 919.828.5751

Client:	Pulte Homes
Project:	Clayton Property
Location:	Durham, Durham County, NC
F&R Project No:	66R-0106
Source:	"Green Level, NC" dated 1983
Date: August 2013	Scale As Shown

Figure #2



AERIAL SITE PLAN		North ▲	
FROEHLING & ROBERTSON, INC. ENGINEERING • ENVIRONMENTAL • GEOTECHNICAL 310 Hubert Street Raleigh, North Carolina 27603-2302 I USA T 919.828.3441 I F 919.828.5751	Client:	Pulte Homes	
	Project:	Clayton Property	
	Location:	Durham, Durham County, NC	
	F&R Project No:	66R-0106	
	Source:	Durham Co GIS – dated 2010	
	Date: August 2013	Scale As Shown	Figure #3

Appendix B: Site Photographs

General view of the Property looking east

General view of the Property looking west from Doc Nichols Rd

View of pine forested area on the northern portion of the site

View of the northwestern portion of the site looking south

View of the wooded areas on the northwestern portion of the site

View of grassy areas on the western portion of the site looking south

View along the southern portion of the site looking west

View along the southern portion of the site looking east

View along the northern portion of the site looking east

View along the northern portion of the site looking west

View of the Property looking north along Doc Nichols Rd

View of the Property looking west from Doc Nichols Rd

View of the Property looking south along Doc Nichols Rd

View of the Property looking west along Leesville Rd

View of electrical connector boxes on the southeastern portion of the Property

View of the residence on the parent parcel looking southwest

View of the grassy areas on the parent parcel looking south

View of the residence on the parent parcel looking northwest

View of an AST and UST vent/fill pipes on the parent parcel along the northern side of the residence

A close- up view of the AST and UST vent/fill pipes on the parent parcel along the northern side of the residence

View along a gravel drive located along the northern property boundary

View from the Property looking north

View from the Property looking south across Leesville Rd

View from the Property looking east along Leesville Rd