

SECTION 00 52 15

AGREEMENT FORM - EJCDC STIPULATED SUM (SINGLE-PRIME CONTRACT)

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2020, by and between the City of Durham (Owner), a North Carolina municipal corporation, and _____ (Contractor), [Indicate type of entity, for instance:

*a corporation organized and existing under the laws of [name of State];
a limited liability company organized and existing under the laws of [name of State];
a professional corporation organized and existing under the laws of [name of State];
a professional association organized and existing under the laws of [name of State];
a limited partnership organized under the laws of [name of State];
a sole proprietorship;
or a general partnership].*

The City of Durham and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1.1 WORK

- A. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work contemplated under the provisions of this contract includes, but may not be limited to, the installation of 1,069 linear feet of sanitary sewer lines on Garrett Road and Mimosa Drive along with all associated items to complete the installation.

1.2 THE PROJECT

- A. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

- Contract: WS-85, Petition Sewer on Garrett and Mimosa 2020

- B. Listed below are the Site(s), in order of priority, that the Contractor may be instructed to complete construction²¹ under this Contract:

- Garrett Road at Colorado Avenue
- Mimosa Drive at Pearson Drive

1.3 ENGINEER

- A. The Project has been designed by The City of Durham, Department of Public Works, Engineering Division (Bayan Alzubi), who is to act as the City of Durham's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

1.4 CONTRACT TIMES

- A. Time of the Essence
1. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- B. Days to Achieve Substantial Completion and Final Payment
1. The Work shall be substantially completed within 150 days after the date when the Contract Times commence to run (Notice to Proceed - Construction) as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 180 days after the date when the Contract Times commence to run (Notice to Proceed - Construction).
- C. Liquidated Damages
1. Contractor and the City of Durham recognize that time is of the essence of this Agreement and that the City of Durham will suffer financial loss if the Work is not completed within the times specified in Paragraph 1.4.B.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City of Durham if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City of Durham and the Contractor agree that as liquidated damages for the delay (but not as a penalty), Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City of Durham, Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for completion and readiness for final payment until the Work is completed and ready for final payment.
 2. Failure of the Contractor to commence construction within ten (10) days of the Notice to Proceed shall begin a daily liquidated damages assessment against the Contractor at a rate of fifty percent (50%) of the daily liquidated damages specified in Paragraph 1.4.C.1.
- D. Weather Related Delays
1. The Contractor may request for an extension of Contract Times for delays related to adverse weather as described in the General Conditions, Paragraph 12.02A.
- E. Day and Time Restriction
1. The Contractor will be allowed to work on this project Monday thru Friday between the hours of 9:00 a.m. and 4:00 p.m. The hours may be further restricted by the following:
 - a. No work will be allowed on City Holiday(s), unless authorized by the Engineer.
 - b. Work will only be allowed when there is sufficient natural lighting to work safely.

- c. No artificial lightning will be allowed on this project, unless authorized by the Engineer. If artificial lightning is allowed by the Engineer, all cost for the artificial lightning shall be at the Contractor's expense.
- d. No work will be allowed on a street at or near a school while it is in session, unless authorized by the Engineer.
- e. No work will be allowed in the area where a special event is taking place unless authorized by the Engineer.
- f. No work will be allowed on a street during times of unusually heavy traffic.

1.5 CONTRACT PRICE

- A. The City of Durham shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount determined pursuant to Paragraphs 1.5.A.1 and 1.5.A.2 below:
 - 1. *Not Used.*
 - 2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Paragraph 1.5.A.2:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

Unit Cost Bid Items					
WS-85: PETITION SEWER ON GARRETT AND Mimosa					
Line #	Description	Unit	Quantity	Unit Price	Cost
1	CONSTRUCTION SURVEYING	LS	1		
2	CLEARING & GRUBBING ..	LS	1		
3	UNDERCUT EXCAVATION	CY	100		
4	GRADING	LS	1		
5	BORROW EXCAVATION	CY	990		
6	REMOVAL OF EXISTING ASPHALT PAVEMENT	SY	10		
7	REMOVAL OF EXISTING CONCRETE PAVEMENT	SY	50		
8	Pipe Removal	LF	15		
9	FINE GRADING	LS	1		
10	AGGREGATE BASE COURSE	TON	30		
11	ASPHALT CONC SURFACE COURSE, TYPE S9.5B	TON	1		
12	ASPHALT BINDER FOR PLANT MIX	TON	5		
13	6" CONCRETE DRIVEWAY	SY	55		
14	RIP RAP, CLASS B	TON	7		
15	GEOTEXTILE FOR DRAINAGE	SY	20		
16	GENERIC EROSION CONTROL ITEM (Inlet Protection)	EA	6		
17	GENERIC EROSION CONTROL ITEM (Silt Fence Outlets)	EA	3		
18	TEMPORARY TRAFFIC CONTROL	LS	1		
19	TEMPORARY Silt Fence	LF	198		
20	8" SANITARY GRAVITY SEWER PVC	LF	975		
21	8" SANITARY GRAVITY SEWER DI	LF	80		
22	5' DIA UTILITY MANHOLE	EA	7		
23	SEEDING & MULCHING	ACR	1		
24	COIR FIBER WATTLE	LF	12		
25	POLYACRYLAMIDE (PAM)	LB	10		
26	NEW SANITARY SEWER SERVICE	EA	3		
27	Reconnected Sanitary Sewer Services	EA	1		
28	Concrete Encasement	CY	7		
29	Mechanical Joints	EA	4		
30	Bypass Pumping	LS	2		
PROJECT SUBTOTAL					
31	MOBILIZATION (Not to exceed 5% of total)	LS	1		
Total Cost For Contract WS-85					

- 1.6 PAYMENT PROCEDURES
- A. Submittal and Processing of Payments
1. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- B. Progress Payments; Retainage
1. The City of Durham shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraphs 1.6.B.1.a through 1.6.B.1.e below. All such payments will be measured by the

schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

- a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amount as Engineer may determine or the City of Durham may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
- b. The City of Durham will retain five (5) percent of the amount of each estimate until Work covered by the Contract is fifty percent (50%) complete. If after the Project is deemed fifty percent (50%) complete based upon the Contractor's gross Project invoices, excluding the value of materials stored on and off-site, and the Contractor provides the City and the Engineer the following:
 - 1) Written verification evidencing fifty percent (50%) completion of the Project; and,
 - 2) Written consent of the surety named in the Project performance and payment bonds agreeing that the City shall not retain any further retainage from periodic payments due to the Contractor; the City shall cease holding retainage from future periodic payments if the City finds that the Contractor is performing satisfactorily, and any nonconforming Work identified in writing by the Engineer or City (prior to the point of fifty percent (50%) Project completion) has been corrected by the Contractor and accepted by the Engineer or City, whoever provided such prior notice of nonconforming Work. If, however, the City determines the Contractor's performance is unsatisfactory, the City may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, City may assess retainage after fifty percent (50%) project completion, even if the Contractor has complied with [Paragraphs 1.6.B.1.b.1 and 1.6.B.1.b.2 (above)] and continues to perform satisfactorily as necessary to retain two and one-half percent (2.5%) total retainage through the completion of the Project.
- c. Not Used.
- d. Not Used.
- e. Within sixty (60) days of receipt by City of (1) an Application for Payment and (2) written consent of the surety, and after City has either (1) received a certificate of Substantial Completion or (2) received beneficial occupancy or use of the Project (if applicable), the City of Durham shall pay an amount sufficient to increase total payment to Contractor to the Contract Price, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions, including up to two hundred fifty percent (250%) of Engineer's estimate of the value 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.

C. Final Payment

1. Prior to issuing final payment, the Contractor will furnish to the City of Durham certification that: All Subcontractors and vendors associated with this Contract have been paid; no liens and/or lawsuits have been placed against the Contractor for this Work; and the total dollar amount has been paid to all Subcontractors, Suppliers, and others associated with this project.
2. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the City of Durham shall pay the remainder of the Contract price as recommended by Engineer as provided in said Paragraph 14.07.

1.1 NOT USED

1.2 CONTRACTOR'S REPRESENTATIONS

- A. In order to induce the City of Durham to enter into this Agreement Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied all:
 - a. Reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Paragraph 4.02 of the General Conditions; and
 - b. Reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in Paragraph 4.06 of the General Conditions.
 5. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional and supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
 6. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 7. Contractor is aware of the general nature of work to be performed by the City of Durham and others at the Site that relates to the Work as indicated in the Contract Documents.
 8. Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified

- in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 11. The Contractor affirmatively acknowledges and agrees that (a) the Contract Time provide for in the Contract Documents to complete the Work is reasonable and (b) the compensation provided for the Work in the Contract Documents is reasonable.

1.3 CONTRACT DOCUMENTS

A. Contents

1. The Contract Documents consist of the following:
 - a. This Agreement (pages 1 to 15, inclusive).
 - b. Performance and Payment bonds.
 - c. Other bonds: None.
 - d. General Conditions (EJCDC C-700, pages 1 to 54 inclusive, and within project manual titled, "Contract: WS-85, Petition Sewer on Garrett and Mimosa 2020," sealed on August 14, 2020 by engineer, Edward R. Venable (herein after, "Project Manual").
 - e. Technical Specifications as listed in the table of contents of the Project Manual, Pages 35 to 89.
 - f. Construction Drawings found on the City's website labeled as WS-85 Plan Sheets; sealed on May 2, 2018 by engineer, Timothy J. Watson
<https://durhamnc.gov/4110/WS-85-Petition-Sewer-on-Garrett-Mimosa-2>
 - g. Addendum(s):
 - h. Exhibits to this Agreement (enumerated as follows):
 - 1) Contractor's Bid.
 - 2) Contract Certificates of Liability/Insurance.
 - 3) Non-Collusion Statement by Contractor.
 - 4) Documentation submitted by Contractor prior to Notice of Award.
 - i. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - 1) Notice to Proceed.
 - 2) Work Change Directives.
 - 3) Change Order(s).

B. The documents listed in Paragraph 1.9.A.1 are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Paragraph 1.9.A.1.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

- E. Coordination of General Conditions, Supplementary Conditions, Agreement, Drawings, and Technical Specifications
 - 1. All components of the Contract Documents are essential elements of the Contract between the Owner and Contractor, and notwithstanding the requirements of Paragraph 3.03 of the General Conditions, in case of a conflict or contradiction among the General Conditions (including Supplementary Conditions), Agreement, Drawings, and Technical Specifications, the following shall be the order of controlling authority as among these documents: The Technical Specifications and Drawings shall control over the Agreement and the Agreement shall control over the General Conditions (including Supplementary Conditions). The Technical Specifications and the Drawings are intended to work together and complement each other. Any discrepancy or ambiguity between the Technical Specifications and the Drawings shall be interpreted consistent with the clear intent of the designer. If the intent of the designer is not clear, the Engineer shall determine which is controlling.

1.4 MISCELLANEOUS

- A. Terms
 - 1. Terms used in this Agreement will have the meanings stated in the General Conditions.
- B. Assignment of Contract
 - 1. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- C. Successors and Assigns
 - 1. The City of Durham and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- D. Severability
 - 1. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City of Durham and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- E. Notices and Communications
 - 1. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance,

suspension or termination of contract, and extension or renewal of the term. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City (Owner):

ATTN: Bayan Alzubi, EI
City of Durham
Department of Public Works/Engineering
101 City Hall Plaza, Ste. 3100
Durham, NC 27701-3329
Fax No.: (919) 560-4316
Email: Bayan.Alzubi@durhamnc.gov

To the Contractor:

COMPANY
ATTN:
ADDRESS
ADDRESS
PHONE NO.
EMAIL

2. A change of address, fax number, or person to receive notices or communications may be made by either party by notice given to the other party. Any notices or communications under Contract shall be deemed given at the time of actual delivery, if it is personally delivered or faxed. If the notices or communications are sent by United States mail, it shall be deemed given upon the third calendar day following the day on which the notices or communications were postmarked, or upon actual delivery, whichever first occurs.

F. Other Provisions

1. Finish Work
 - a. The Contractor shall be responsible for all finish work. Any work that is defaced, scarred, or vandalized prior to acceptance must be corrected within thirty (30) days time from the date notice is given by the City of Durham.

G. Technical Data and Other Work

1. Subsurface and Physical Conditions
 - a. No reports of explorations or tests of subsurface conditions at or contiguous to the Site are known to the City of Durham or Engineer.
2. Hazardous Environmental Condition
 - a. No reports or drawings related to Hazardous Environmental Condition are known to the City of Durham or Engineer.
3. Other Work
 - a. The City of Durham and Engineer are unaware of any other work on the Site at the time of Notice to Proceed

- H. Insurance Requirements-- Contractor shall maintain the insurance coverage required under Article 5 of the General Conditions and in the amounts identified below. In the case of any conflict between this Paragraph 1.10.H and Article 5 of the General Conditions, the Contractor shall comply with more stringent requirement.
1. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.
 - a. Commercial General Liability - Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
 - b. Automobile Liability - Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.
 - c. Umbrella or Excess Liability - Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.
 - d. Worker's Compensation & Employers Liability - Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.
 - e. Professional Liability - Contractor agrees to maintain Professional Liability Insurance with limits no less than \$1,000,000, covering claims arising out of professional architect, engineers and surveyors services performed in connection with this contract.
 - f. Environmental/Pollution - Contractor agrees to maintain Environmental/Pollution Liability Insurance with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, covering claims arising out of the use or application of chemicals/herbicides as well as the negligent release of hazardous materials. Coverage may also be satisfied by endorsement to the Commercial General Liability policy with minimum limits of \$1,000,000/\$2,000,000.

- g. Additional Insured - Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.
- h. Certificate of Insurance - Contractor agrees to provide City of Durham a Certificate 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 Contractor's insurer. If Contractor 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, Contractor 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 which coverage is no longer in compliance. The Certificate Holder address should read:
 - City of Durham
 - Dept. of Public Works/Contract Management
 - 101 City Hall Plaza, Ste. 3100
 - Durham, NC 27701
- i. All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham's Risk Manager

I. E-Verify Requirements

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

- J. Change "SDBE" to "UBE" – Paragraph 6.06.K and subparagraphs of the General Conditions are amended by replacing the phrase "Small Disadvantaged Business Enterprises" with "Underutilized Business Enterprises" and replacing "SDBE" with "UBE".

- K. Indemnification provision replacement –Paragraph 6.20 (Indemnification) of the General Conditions is deleted in its entirety and replaced with the following new paragraph:

6.20 *Indemnification.*

- A. (Definitions). These definitions apply to this Paragraph 6.20 unless otherwise stated.

Contractor – Each party to this contract except the City of Durham.
Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend -- to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault -- a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor -- any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

B. (Standard Indemnification). (i) The Contractor shall defend, indemnify and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subparagraph "i," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within "Charges" are (1) interest and reasonable attorney's fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract.

C. (Restriction regarding Indemnitees' Negligence). This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

D. (Restriction regarding Fault). Nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the

loss, damage, or expense indemnified.

E. (Restriction regarding Negligence). Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or alleged caused by the professional negligence, in whole or in part of the Contractor, the City, or their derivative parties, whether the claim is alleged or brought in tort or contract.

F. (Liability When at Fault). It is agreed without limitation that nothing in this contract shall be interpreted to exclude from any indemnity or hold harmless provisions enforceable under subparagraphs 6.20.C and 6.20.D any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses, or court costs to be indemnified.

G. (Insurance contracts and bonds) This Paragraph 6.20 does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and does not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.

H. (Other Provisions) When this Paragraph 6.20 or any subparagraph or combination of subparagraphs of this Paragraph applies, it applies to every provision in this contract outside of this Paragraph that would require the Contractor to indemnify, hold harmless, or defend Indemnitees regardless of whether the Paragraph in question is titled "indemnification," "warranty," or otherwise.

I. (Survival) This Paragraph 6.20 shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

J. (Compliance with law). It is agreed that this Paragraph 6.20 shall be applied to the maximum extent allowed by law and limited only as necessary to comply with N.C.G.S. § 22B-1.

NON-COLLUSION STATEMENT BY CONTRACTOR

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

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

.....
CONTRACTOR

DRAFT

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

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____

ATTEST:

[CONTRACTOR legal name]

Secretary

By: _____
Title: _____

(Affix Corporate Seal)

State of _____

ACKNOWLEDGMENT BY CORPORATION

County of _____

I, _____, notary public, certify that _____ personally appeared before me this day and stated that he or she is _____ President of _____, a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the corporate seal was affixed thereto. This the ____ day of _____, 20____.

My commission expires:

Notary Public