

BRUNSWICK COUNTY
REQUEST FOR
QUALIFICATIONS

**Sea Trail WWTP Interconnection
and Decommissioning –
Design-Build**

ISSUE DATE: **May 21, 2025**

DUE DATE: **July 10, 2025**



[BRUNSWICKCOUNTYNC.GOV/BID](https://www.brunswickcountync.gov/bid)

BRUNSWICK COUNTY PUBLIC UTILITIES
OPERATIONS CENTER

250 GREY WATER ROAD NE
SUPPLY, NORTH CAROLINA 28462

MAILING ADDRESS
P. O. Box 249
BOLIVIA, NORTH CAROLINA 28422

TELEPHONE
(910) 253-2657
FAX
(910) 253-4305

May 21, 2025

**Request for Qualifications Statements
Sea Trail Wastewater Treatment Plant
Interconnection and Decommissioning – Design-Build**

Pursuant to N.C.G.S. § 143-128.1A, Brunswick County is requesting qualifications statements to provide design-build services for the interconnection of the Sea Trail Wastewater Treatment Plant (“WWTP”) to the Ocean Isle Beach (“OIB”) WWTP and the decommissioning and dismantlement of the Sea Trail WWTP. The project goals are to: 1) design and construct an interconnection between the existing Sea Trail WWTP to the OIB WWTP for wastewater treatment, 2) design and construct an interconnection from the OIB WWTP to the Sea Trail WWTP for returning reclaimed water, and 3) design, decommission, and dismantle of the Sea Trail WWTP.

Brunswick County will provide the design-builder a copy of pertinent documents including the available facility as-built drawings, flow rates, 2023 Wastewater Master Plan, 2024 OIB WWTP Centralization and Rehabilitation Preliminary Engineering Report, and any other applicable documents. Actual data from the County’s operations along with the wastewater volume projections stated in the latest wastewater master plan will be used by the design-build team to develop the final design parameters.

Services will include, but not be limited to, review and evaluation of the pertinent documents to support a design-build approach for the following scope: new reclaim force main, new sewer transmission force main, dismantlement and removal of the Sea Trail WWTP, and closure of the Sea Trail WWTP’s upset pond. The design-builder will be responsible for complete design, permitting, construction, and all associated fees. A more detailed Scope of Work is attached hereto. Any amendments to the Scope of Work will be made in the form of addendum to this Request for Qualifications. Any addendum will be provided to all known interested design-builders and posted to the County website. Notwithstanding the foregoing, design-builders will be responsible for ensuring that they have all addenda. The County will not be responsible for notifying any parties.

The Sea Trail WWTP Interconnection and Decommissioning Design-Build project is part of the County’s Capital Improvement Plan (CIP) and has been allocated a maximum budget of \$10.8 million for the completion of the project.

Design-builders interested in being considered for this work can attend a site visit hosted by Brunswick County Public Utilities. The site visit will occur on June 3, 2025 on site at the Sea Trail WWTP located at 1395 Angels Trace SW, Sunset Beach, NC, 28468. Interested design-builder

should contract Robert Miller at (910) 253-1759 or Robert.Miller@brunswickcountync.gov to be added to the attendees list.

Design-builders interested in being considered for this work should submit their qualifications to:

Post Office Delivery

Robert Miller, PE, PMP, DBA
Brunswick County Public Utilities
P. O. Box 249
Bolivia, NC 28422

Hand Delivery or Alternate Shipping Service

Robert Miller, PE, PMP, DBA
Brunswick County Public Utilities
250 Grey Water Road NE
Supply, NC 28462

For consideration, five (5) hard copies and one (1) electronic copy on a USB drive of the response to this Request for Qualifications must be received by the County by close of business (4:30 p.m. ET) on July 10, 2025. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver responses prior to the stated date and time. Regardless of the manner of submission, any response received after the stated date and time will not be considered. Incomplete responses or responses inconsistent with the required format may be disqualified from consideration.

The design-builder is required to have insurance as outlined in the Minimum Insurance Requirements attached hereto and incorporated herein by reference. The design-builder will be required to provide a Certificate of Insurance with its Statement of Qualifications as evidence that it meets the minimum requirements.

The design-builder is required to have proper license(s) under the laws of the State of North Carolina governing the respective trades. Proof of licensure will be required.

All questions or comments shall be submitted to robert.miller@brunswickcountync.gov or at 910-253-1759 by June 13, 2025. A copy of all questions, further clarifications, and answers will be made in the form of an addendum to this Request for Qualifications that will be provided to all known interested design-builders. Any addendum will also be posted to the County website. Notwithstanding the foregoing, design-builders will be responsible for ensuring that they have all addenda. The County will not be responsible for notifying interested parties. **Interested design-builders are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Qualifications, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the design-builder.**

Sections shall be **divided by tabs** that indicate the title of each section. At a minimum, the qualifications statement should include the following information:

- 1) The company's full legal name, primary office location, office location of project personnel, years of experience, and a contact person.
- 2) List of all applicable NC licenses for construction, engineering, and/or other trades/professions pertinent to the project.

- 3) An explanation of the project team selection in accordance with N.C.G.S. 143-128.1A(b)(8).
- 4) Qualifications of the team members who will be assigned to the project: The project manager and other key team members should be clearly identified. If subcontractors are to be used for any portion of the work, they should be identified if known, and their qualifications included. County reserves the right to reject any subcontractor in its sole and absolute discretion.
 - a) The qualifications statement shall clearly indicate who will oversee the project as well as the roles that each individual shall perform.
 - b) Special emphasis shall be provided on the individuals' backgrounds, qualifications, certifications, experience on related and or similar projects, and experience of the team working together.
 - c) Each design-builder must certify, in its response to this Request for Qualifications, that each design professional that is a member of the design-build team, including all subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by N.C.G.S. 143-64.31.
 - d) After the award of the contract, the design-builder may not substitute any key personnel without obtaining written approval from Brunswick County.
- 5) Experience on similar projects: The qualifications statement should include a description and contact person for at least three (3) projects that were similar in size and scope as this project. For each project experience listed, list the role played by each of the current team members.
- 6) A project schedule including key milestones should be included. The project schedule should start from the Notice to Proceed and include two-week review times for County staff reviews. The anticipated project schedule is as below:

Event	Deadline
Advertise Design-Build RFQ	May 21, 2025
Receive Statements of Qualifications (SOQ)	July 10, 2025
Design-Builder Selection and Notification (2 weeks from SOQ)	July 24, 2025
Execute Design-Build Agreement & Notice to Proceed (NTP) (up to 2 months from Selection – including BOC approval)	September 15, 2025
60% Design Complete with GMP (180 days from NTP)	March 14, 2026
Construction Complete (365 days from 60% design completion)	March 14, 2027

The County reserves the right to refine the Project schedule with the selected design-builder at any time after contract award.

A project schedule will be included in the contract for this work. The project schedule should follow the format shown below:

Task	Days	2025										2026					2027				Man Hours	
		Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	→	Aug	Sep	Oct	Nov	Dec	Jan	→	Apr		May
Background	14 days	▲																				50
Study and Report Phase	80 days																					100
Preliminary Phase	90 days																					250
Survey	45 days																					160
Wetlands Delineation	10 days																					50
Geotechnical Investigation	25 days																					150
Final Design Phase	100 days																					450
Permitting	70 days																					100
Easements	20 days																					60
Bidding and Negotiation Phase	60 days																					100
Construction Services	220 days																					1,200
Post-Construction Phase	60 days																					350
Grant Compliance	N/A																					500
		Total																				3520

▲ Notice to Proceed

Note: This schedule accommodates two-week review times for County staff reviews

- 7) A brief description of the project approach to be used by the design-builder should be included.
 - a) In the design-builder’s own words, 1) describe the understanding of the project, 2) the requirements of the project, 3) the challenges associated with the project, 4) the approach to handling the project challenges, and 5) the anticipated outcome of the project.
 - b) Describe the methodology and approach to design, permitting, and construction services.
 - c) Type and amount of self-performed work that is anticipated.
 - d) List all assumptions made in preparing the project approach.
 - e) Discuss any additions, deletions, or changes to the Scope of Work which may improve the project. Discuss how these changes will affect the associated resources and schedule.

In addition to the foregoing, the selected design-builder will be required to provide performance and payment bonds for 100% of the contract amount prior to construction.

Brunswick County reserves the right to request financial information for any design-builder in order to support the viability of the design-builder.

Brunswick County reserves the right to refuse or reject any or all qualifications and to waive any and all formalities, irregularities, or technicalities. Brunswick County reserves the right to select the design-builder that best meets its needs and negotiate a final Scope of Work that reflects the work to be done and the budget constraints. The County reserves the right to request oral presentations/interviews as a part of the selection process. All design-builders submitting a qualifications statement will receive notification once the contract has been awarded.

A more detailed description of the work to be performed is contained in the enclosed Scope of Work. Design-builders submitting qualifications statements should use the enclosed Scope of

Work as a guide but may develop their own scope based upon their experiences on similar projects. The County will negotiate and refine a final Scope of Work with the selected design-builder. The design-builder's final contract shall be based on a guaranteed maximum price ("GMP"), inclusive of permit application fees and other expenses (printing, mileage, per diem, etc.). No additional compensation shall be made for reimbursable items.

Qualifications Selection Criteria and Weighting

Statements of Qualifications will be evaluated based on the following criteria:

1. The design-builder's experience in providing similar services for similar projects;
2. Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project;
3. Understanding of Scope of Work;
4. Ability to meet deadlines and deliver within budget;
5. Qualifications statement appearance and presentation.

Qualifications Selection Criteria	Qualifications Selection Criteria Weighting
	Max Points
The design-builder's experience in providing similar services for similar projects	20
Qualifications and accessibility of key individuals identified in the qualifications statement that will be assigned to the project	10
Project Approach	25
Understanding of Scope of Work	25
Ability to meet deadlines and deliver within budget	20
Total Points	100

A panel will review and score the responses individually. The panel will then meet to discuss the responses, compare the respondents' individual criteria, and rank the three (3) most highly qualified firms based on the design-builder's demonstrated competence and qualifications without regard to fee other than unit price information.

Minority Business Enterprises

Brunswick County has implemented a Minority Business Enterprise Policy that requires contractors to exhibit good faith efforts to contact minority business subcontractors whose work on the project would represent 10% of the total value of the work.

NOTE: The selected design-builder will be required to provide affidavits regarding minority business participation, in a format acceptable to Brunswick County, prior to a Contract Price Amendment for Phase 2 services.

Certification

Brunswick County will not be responsible for any costs or expenses incurred by any design-builder in submitting a response. Brunswick County reserves the right to cancel the work described herein prior to the issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

In addition to the terms and conditions contained in this Request for Qualifications, by submitting a response, if selected, the design-builder agrees to enter into and be bound by the provisions of Progressive Design-Build Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for Qualifications and the terms of the Progressive Design-Build Agreement conflict, the terms of the Progressive Design-Build Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties.

The design-builder submitting a qualifications statement hereby certifies that it has carefully examined this Request for Qualifications and all attachments hereto, that it understands and accepts all terms and conditions and the Scope of Work, and that it has knowledge and expertise to complete the project.

If you have any questions, please call us at (910) 253-1759.

Sincerely,

Robert Miller, PE, PMP, DBA
Project Manager

SCOPE OF WORK

Sea Trail WWTP Interconnection and Decommissioning – Design-Build

Background

Brunswick County has established the following objectives and preliminary Scope of Work for this Project. Any changes to the specifications or Scope of Work will be made in the form of an Addendum to this Request for Qualifications that will be supplied to all known prospective design-builders and posted on the Brunswick County website. Design-builders will be responsible for ensuring that they have all addenda. Brunswick County may negotiate and refine the final Scope of Work with the selected design-builder.

The County has a goal to have the Project completed within 550 calendar days from Notice to Proceed. The County’s anticipated project schedule is set forth in the Request for Qualifications. The design-builder is to include a project schedule with key milestones from Notice to Proceed (“NTP”) to completion. The project schedule will be considered in the evaluation process. The project schedule should be presented to provide a visual representation of the number of weeks required to complete the project and a table of the scope items with estimated durations.

The Brunswick County details and specifications are to be utilized where applicable. The selected design-builder will be required to provide performance and payment bonds for 100% of the contract amount prior to construction. After award of contract, the design-builder may not substitute any key personnel without obtaining written approval from Brunswick County.

Brunswick County will provide the design-builder the copy of pertinent documents including the 2023 Wastewater Master Plan, 2024 OIB WWTP Centralization and Rehabilitation Preliminary Engineering Report, flowrates and operating data for the existing Sea Trail WWTP, required flows for the reclaim water transmission pipeline, and as-builts of the Sea Trail WWTP. The selected design-builder will review all relevant documents and meet with County staff to document the goals and objectives for the project. The Scope of Work described herein is based upon design and construction of the wastewater transmission force main, reclaim water transmission force main, and the design, decommissioning, and dismantlement of the Sea Trail WWTP, along with any ancillary equipment, facilities or needs to complete the project.

Scope of Work

The Sea Trail WWTP has reached the end of its useful life and is need of decommissioning and dismantlement. The selected design-builder will review the as-builts of the existing WWTP and provide a design suitable for the decommissioning and dismantlement of the facility. The design shall include an evaluation of existing piping and valving configurations to redirect flows from the headworks of the Sea Trail WWTP to the existing receiving manhole at the facility. An evaluation of the existing receiving manhole shall be performed to ensure adequate capacity necessary to maintain flows from the Sea Trail sewage basin. The receiving manhole will serve as a flow source for the existing Sea Trail WWTP lift station which will remain in operation and act as a transmission lift station to provide an avenue for the flows to the existing treatment facility. During construction all sewer transmission force mains and reclaim water force mains shall be installed,

commissioned, operational prior to beginning any decommissioning or dismantlement of the Sea Trail WWTP. The selected design-builder will design and construct a 24” force main, size to be verified during design (which may require modeling efforts), from the intersection of Old Georgetown Rd and Seaside Rd to a tie-in near the existing OIB WWTP, approximately 15,000 linear feet. Additionally, to continue to provide reclaim water for reuse in the area of Sea Trail, the selected design-builder will design and construct a 16” reclaim force main, size to be verified during design, from the OIB WWTP to a tie in off of Angel’s Trace Road at Sea Trail Plantation, approximately 15,000 linear feet. The project also includes the evaluation, sampling, and clean closure of the existing upset pond at the Sea Trail WWTP site.

It is the selected design-builder's responsibility to provide resources needed to carry out the project to its completion, which may include, but not be limited to:

1. STUDY AND PRELIMINARY DESIGN PHASE

The design-builder shall provide resources needed to provide any additional planning and design information (i.e., geotechnical studies, surveying, testing, site visits, analyses, etc.). Brunswick County desires to work with the design-builder to develop a project scope that incorporates creativity and innovation relative to costs, schedule, and reliability.

The design-builder will evaluate the proposed route study from the 2024 OIB WWTP Centralization and Rehabilitation Preliminary Engineering Report to support the recommendations for the alignment of the sewer and reclaim transmission force mains. The design-builder shall identify potential easement locations and shall consult with NCDOT concerning encroachments needed within DOT rights-of-way. The design-builder shall prepare an overview map of the project area. The design-builder shall provide copies of the overview map and review the map with the County.

The design-builder will evaluate the existing Sea Trail WWTP and upset pond to support the recommendations for equipment decommissioning and dismantlement. The design-builder will work with Brunswick County to determine any equipment or structures that shall remain after the completion of the project. The design-builder will evaluate the existing influent wet well to determine any required repairs, as this will be used as the influent wet well for the transfer station.

If required, directional drill piping shall be upsized to provide the best-match interior diameter to the piping installed by open cut methods. Preliminary drawings shall clearly indicate easement areas, shut-off valves, directional drill locations, bore and jack locations, air release valves, metering vaults, and bypass piping.

All modifications to existing infrastructure or design of new infrastructure shall be designed in accordance with Brunswick County standards.

The design-builder will be responsible for the design of all systems for the project. The design should show all existing utilities located within the project area and the location should be based upon information from the affected utility. It is anticipated that construction will occur in NCDOT rights-of-way or in County-owned utility easements or within private access easements.

2. SURVEY

The design-builder shall provide base mapping of the route for the new force main inclusive of all above-ground and underground features. All above-ground features shall be surveyed, including, without limitation, breaks in elevation (centerline and top of ditch, etc.). An adequate number of elevation points shall be surveyed to develop contours of the area. The design-builder shall clearly indicate all utilities, indicating size, type, and owner information. Survey data shall be supplemented by existing maps, as-builts, and utility locates. Base mapping will indicate both edges of pavement and existing utilities on both sides of the roadway. Additionally, edges of wetlands and geotechnical boring sites shall be surveyed and clearly shown on the base mapping. Adjacent properties shall be identified by owner and parcel ID number. The survey should include enough information for use in obtaining all necessary permits including the NC DOT and NC DEQ permits.

Any easements or properties to be acquired must also be surveyed and plats suitable for recording prepared. The design-builder shall provide preliminary plat information at the time of completion of the route study. The design-builder shall provide final plats at the time of the 60% design completion.

3. WETLANDS DELINEATION

The design-builder shall perform wetlands delineation sufficient for receipt of all Army Corps of Engineers and NCDEQ permitting. Wetland areas that are sufficiently dry shall be evaluated for pipe installation using open trench techniques.

4. GEOTECHNICAL INVESTIGATION

The design-builder shall perform geotechnical evaluation at necessary intervals to support a complete and thorough design. The design-builder shall perform geotechnical evaluation at all likely directional drill locations and, if determined prudent, provide geotechnical evaluations at bore and jack locations and for structures having significant foundations or significant embedment into the existing ground. Geotechnical borings shall be advanced to refusal or 5' below the maximum depth of the installation, whichever is encountered first. Geotechnical recommendations and soil boring logs shall be incorporated into the Contract Documents. The cost for geotechnical investigations shall be provided on a per each basis.

5. FINAL DESIGN

The design-builder shall provide the resources and expertise to complete the design of a reliable sewer transmission force main, reclaim water force main, and dismantlement that meets or exceeds all regulatory requirements, operations, and maintenance goals of the Project.

6. PERMITTING

Currently, no permitting has been completed for the Project. The design-builder will provide expertise and resources to determine all permitting needed and will work with Brunswick County and the regulatory agencies to successfully obtain all required permits. The design-builder's work shall include revisions and/or modifications to any operating permit(s) associated with the existing Sea Trail and OIB WWTPs.

Upon approval of the Preliminary Drawings, the design-builder shall prepare and submit permits and permit fees to regulatory agencies. At a minimum, these shall include (if required):

- NCDOT Encroachment Agreement
- US Army Corps of Engineers Permits and/or Notifications (401/404 Permits)
- NCDEQ Division of Water Quality Sewer Fast Track Application
- NCDEQ Division of Land Resources Erosion and Sediment Control Permit
- NCDEQ Division of Water Quality Stormwater Permit
- Brunswick County Stormwater Permit
- Brunswick County Zoning and Planning Approval inclusive of all required Departmental Approvals (Engineering, Fire Marshal, etc.)
- Other Permits as required by all Federal, State and Local authorities.

The design-builder shall perform field work, furnish plans and specifications, document preparation, regulatory meetings, responses, evaluate alternatives, and provide recommendations concerning permitting. The design-builder will also solicit comments from the appropriate regulatory agencies during the preliminary design process. Where possible, all regulatory agency comments that are received should be addressed at this project stage.

7. EASEMENTS

Following approval of the final alignment of the sewer and reclaimed water force mains, the design-builder shall prepare easement maps. These maps shall include all information necessary for the County to obtain Permanent Utility Easements, Temporary Construction Easements, and any Permanent/Temporary Access Easements. Mapping shall comply with the requirements of the local zoning officer and the Brunswick County Planning Department. The design-builder shall also help identify and provide maps as necessary to secure permanent access to the proposed lines. Preliminary easement maps shall be provided during preliminary design phase. Final plats, suitable for recording by the County, shall be provided during the final design phase.

8. CONSTRUCTION

The design-builder shall provide excellent construction expertise, management, and resources to complete the project safely, on schedule, and within budget. This shall include, without limitation, scheduling of any necessary inspections, providing necessary documentation and certification based on the construction phase, and conducting on-site construction meetings and walkthroughs. The design-builder is expected to assist with the necessary testing during the commissioning and performance testing of the new facilities. No tie-ins of the new constructed force mains shall be completed without the approval and inspection of Brunswick County Public Utilities.

9. DECOMMISSIONING AND DISMANTLEMENT

The design-builder shall provide excellent expertise in removal of the existing wastewater treatment facilities and associated appurtenances. This includes the removal of the existing treatment plant structures and appurtenances, headworks structure, abandonment of existing underground piping, and clean closure of the facility's upset pond, sampling of sediment in the pond will be required for the closure of the pond to establish the clean out design, during the process, and final closure. Selected buildings on site will be left in place and will be identified during the scoping process between the selected design-builder and Brunswick County Public Utilities.

10. PROJECT MANAGEMENT AND ADMINISTRATION

The design-builder shall provide the resources and expertise on the administration and management of the project to its completion. This includes but not limited to risk management, quality control, document control, authority approvals and compliance, value engineering, and stakeholder engagement and communication.

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

PROGRESSIVE DESIGN-BUILD AGREEMENT
(STANDARD)

THIS PROGRESSIVE DESIGN-BUILD AGREEMENT (the “Agreement” or “Contract”) is made as of the _____ day of _____, 202___, by and between the following parties, for services in connection with the Project identified below:

OWNER:

Brunswick County, a body politic and corporate of the State of North Carolina
30 Government Center Drive NE
P. O. Box 249
Bolivia, NC 28422

DESIGN-BUILDER:

(Name and address)

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

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

This Agreement shall be subject to and further governed by the applicable provisions of the Standard Form of General Conditions of Contract Between Owner and Design-Builder (DBIA Contract Document #535), as may be amended herein, which are incorporated by reference and as more fully set forth in Article 2 below, and any Supplementary General Conditions of Contract (if applicable), which shall be attached hereto as Exhibit D and incorporated herein by reference. In the event any provision between or among this Agreement conflicts with the provisions of the General Conditions of Contract and/or the Supplementary General Conditions of Contract (if applicable), the order of precedence set forth in Article 2 below shall apply. Any capitalized terms not defined herein shall have the meanings ascribed to them in the General Conditions of Contract or Supplementary General Conditions of Contract (if applicable).

Article 1

Design-Builder's Services and Responsibilities

1.1 General Services.

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

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

1.2 Phased Services.

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

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

1.3 Proposal. At the request of the Owner and no later than completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP)..

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

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

- i. Design-Builder's Fee as defined in Section 6.4.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.2 hereof; and
- iii. If applicable, any prices established under Section 6.1.3 hereof;

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

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

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

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

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

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

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 INTENTIONALLY DELETED

1.3.1.11 The time limit for acceptance of the Proposal; and

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

1.3.2 Review and Adjustment to Proposal.

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

1.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

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

- i. Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.2 above; or
- ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

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

Article 2

Contract Documents

2.1 The Contract Documents include, by order of precedence:

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

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

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

2.1.4 Supplementary General Conditions of Contract;

2.1.5 The General Conditions of Contract, as amended herein;

2.1.6 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

2.1.7 Exhibit B, Scope of Services; and

2.1.8 The following other documents, if any:
(List all additional documents or N/A)

Article 3

Interpretation and Intent

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

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

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

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any

design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

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

Article 4

Ownership of Work Product

4.1 All work product created by Design-Builder pursuant to this Agreement, including, without limitation, design drawings, construction documents, photographs and models and any derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent (hereinafter referred to collectively as "Work Product") shall be the exclusive property of County. County and Design-Builder agree that such original works of authorship are "works made for hire" of which County is the author within the meaning of the United States Copyright Act. To the extent that County is not the owner of the intellectual property rights in and to such Work Product, Design-Builder hereby irrevocably assigns to County any and all of its rights, title and interest in and to all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret or any other state or federal intellectual property law or doctrine. Upon County's request, Design-Builder shall execute such further documents and instruments or obtain such documents from third parties, including consultants and subcontractors, if applicable, necessary to fully vest such rights in County. Design-Builder forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 U.S.C. § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

4.2 In the event the use of any of Design-Builder's intellectual property, including any derivative work created with the use of third-party intellectual property, is necessary for the use of any Work Product, Design-Builder hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the intellectual property for the purposes set forth in this Agreement and will ensure that any third-party grants the same.

4.3 County may use Work Product for any other purpose and on any other project without additional compensation to Design-Builder. Notwithstanding the foregoing, the use of Work Product by County for any purpose other than as set forth in this Agreement shall be at County's risk.

Article 5

Contract Time

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

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than five hundred and fifty (550) calendar days after the Date of Commencement ("Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: Interim milestones will be defined in Phase 2 GMP proposal for portions of the Work with different scheduled dates for Substantial Completion.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

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

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner One Thousand Dollars and No/100 (\$1,000.00) as liquidated damages for each calendar day that Substantial Completion extends beyond the LD Date.

Design-Builder understands that if Final Completion is not achieved by the scheduled Final Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved by the scheduled Final Completion Date, Design-Builder shall pay to Owner One Thousand and No/100 Dollars (\$1,000.00), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special

or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

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

5.6.1 Owner shall have a minimum of ten (10) days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.6.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule, and any updates thereto within ten (10) days of receipt by Owner.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$ _____) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer, and other taxes mandated by applicable Legal Requirements.

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

6.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

6.2 INTENTIONALLY DELETED

6.3 INTENTIONALLY DELETED

6.3.1 INTENTIONALLY DELETED

6.3.2 INTENTIONALLY DELETED

6.4 Design-Builder's Fee.

6.4.1 Fourteen percent (14%) of the Cost of the Work, as adjusted in accordance with Section 6.4.2 below.

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

6.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee based on the Design-Builder's Fee Percentage as indicated in Section 6.4.1 applied to the additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

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

An amount equal to the sum of: (a) the Design-Builder's Fee Percentage as indicated in Section 6.4.1 applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit E hereto applied to the direct costs of the net reduction.

6.5 Cost of the Work.

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

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

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

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit ___ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a N/A percent (N/A%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions, and assessments required by law, collective bargaining agreements or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

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

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

6.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged, or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

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

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

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

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

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

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

6.5.1.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

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

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

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

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

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

6.5.1.21 Accounting and data processing costs related to the Work.

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

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

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

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

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

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

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

6.6 The Guaranteed Maximum Price.

6.6.1 Design-Builder guarantees that it shall not exceed the GMP in the amount set forth in the Contract Price Amendment for Phase 2 services. Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended*

that such exhibit include the items set forth in Section 1.3 above, to ensure that the basis for the GMP is well understood.)

6.6.2 The GMP includes a Contingency in the amount set forth in the Contract Price Amendment for Phase 2 services, which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. Unanticipated costs are those clearly outside of the assumptions and clarifications provided per Section 1.3.1.3 and any mutually agreed upon by Owner and Design-Builder. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.6.3 Savings.

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

[Choose one of the following:]

Forty percent (40%) to Design-Builder and
Sixty percent (60%) to Owner.

or

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

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

6.7 Allowance Items and Allowance Values.

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

6.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

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

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

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

Article 7

Procedure for Payment

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

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the fifteenth (15) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

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

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

7.3 Retainage on Progress Payments.

7.3.1 Owner will retain five percent (5%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

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

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

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

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

7.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of eight percent (8%) per month until paid.

7.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon

reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

Article 8

Termination for Convenience

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

or

- Overhead and profit in the amount of fourteen percent (14%) on the sum of items set forth in Section 11.6.1 of the General Conditions.

8.2 INTENTIONALLY DELETED

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

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

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

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

9.2 Design-Builder’s Representatives.

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

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

Article 10

Bonds and Insurance

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

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

- A Performance Bond is required.
- A Payment Bond is required.
- Other Performance Security.

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

- Required Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

11.2 Governing Law and Venue. This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

11.3 Dispute Resolution. The parties hereto expressly agree that Section 10.3 of the General Conditions of Contract and any and all other references to arbitration shall be deleted in their entirety. In lieu thereof, should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

11.4 Governmental Immunity. Owner, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

11.5 Non-Appropriation. In addition to the termination provisions set forth in Article 11 of the General Conditions of Contract and notwithstanding anything to the contrary contained herein or in the General Conditions of Contract, if the Board of County Commissioners of Owner does not appropriate the funding needed by Owner to make payments under this Agreement for a given fiscal year, Owner will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, Owner will promptly notify the Design-Builder of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by Owner which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

11.6 Independent Contractor. Owner and Design-Builder agree that Design-Builder shall act as an independent contractor and shall not represent itself as an agent or employee of Owner for any purpose in the performance of its duties under this Agreement. Owner shall be responsible for payment of all federal, state, and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Design-Builder shall not be entitled to participate in any plans, arrangements or distributions by Owner pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to Owner's employees.

11.7 Divestment from Companies that Boycott Israel. Design-Builder hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.80 *et seq.*

11.8 Debarment. Design-Builder hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Design-Builder must notify Owner within thirty (30) days if debarred by any governmental entity during this Agreement.

11.9 Non-discrimination in Employment. Design-Builder shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal,

state, or local law or other unlawful form of discrimination. Design-Builder shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Design-Builder is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by Owner, and Design-Builder may be declared ineligible for further agreements with Owner.

11.10 Minority Business Enterprises. Design-Builder will make a good faith effort to utilize Minority Business Enterprises (MBEs) per N.C.G.S. § 143-128 in the performance of this Agreement.

11.11 Compliance with E-Verify Program. Pursuant to N.C.G.S. § 143-133.3, Design-Builder understands that it is a requirement of this Agreement that Design-Builder and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Design-Builder agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and it shall require its subcontractors to do the same. Upon request, Design-Builder agrees to provide Owner with an affidavit of compliance or exemption.

11.12 Confidential Information. In addition to the provisions set forth in Section 13.1 of the General Conditions of Contract, the parties agree that the restrictions regarding the use and disclosure of Confidential Information do not apply to information that is: (i) in the public domain through no fault of the receiving party; (ii) within the legitimate possession of the receiving party, with no confidentiality obligations to a third party; (iii) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; (iv) independently developed by the receiving party without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information; (v) disclosed with the prior written consent of the disclosing party; or (vi) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event the receiving party receives such a request, it shall notify the disclosing party, and the disclosing party shall have the opportunity to defend against production of such records at the disclosing party's sole expense.

11.13 Design-Builder Representations and Warranties. Notwithstanding anything to the contrary contained herein or in the General Conditions of Contract, Design-Builder represents and warrants that:

11.13.1 Design-Builder is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

11.13.2 Design-Builder has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

11.13.3 No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Design-Builder to enter into and perform its obligations under this Agreement;

11.13.4 Design-Builder shall not violate any agreement with any third party by entering into or performing the services under this Agreement;

11.13.5 The services provided by Design-Builder under this Agreement will not violate, infringe, or misappropriate any patent, copyright, trademark, or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements);

11.13.6 Design-Builder shall ensure that whenever its employees or agents are on Owner's property, they will strictly abide by all instructions and directions issued by the Owner with respect to rules, regulations, policies, and security procedures applicable to work on Owner's premises. Such rules, regulations, policies, and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

11.14 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

Exhibit C – Minimum Insurance Requirements (as may be amended from time to time by Owner)

Exhibit D – Supplementary General Conditions of Contract

Exhibit E – Designer's Rate Sheet

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract"), as amended herein

Contract Price Amendment, if any.

Article 12

Limitation of Liability

12.1 INTENTIONALLY DELETED.

Article 13

Execution

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

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

BRUNSWICK COUNTY

[DESIGN-BUILDER]

(Signature)

(Signature)

(Printed Name)

(Printed Name)

Chairman, Board of Commissioners
(Title)

(Title)

Date: _____

Date: _____

ATTEST:

Clerk to the Board /
Deputy Clerk to the Board

[SEAL]

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Aaron C. Smith, Finance Director
Brunswick County, North Carolina

Date: _____

APPROVED AS TO FORM

Bryan W. Batton, County Attorney /
Ryan S. King, Assistant County Attorney

Date: _____