

# Progressive Design- Build Agreement (As Modified by the Parties)

## Document No. 544

Second Edition, 2024

© Design-Build Institute of America  
Washington, D.C.



# TABLE OF CONTENTS

<b>Article</b>	<b>Name</b>	<b>Page</b>
Article 1	Design Builder's Services and Responsibilities .....	2
Article 2	Contract Documents .....	5
Article 3	Interpretation and Intent .....	5
Article 4	Ownership of Instruments of Service .....	6
Article 5	Contract Time.....	6
Article 6	Contract Price .....	9
Article 7	Procedure for Payment .....	15
Article 8	Termination for Convenience .....	17
Article 9	Representatives of the Parties .....	18
Article 10	Bonds and Insurance .....	18
Article 11	Other Provisions.....	19



# Progressive Design-Build Agreement

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

---

This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 20\_\_\_\_\_, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

City of Raleigh  
222 W. Hargett Street, Suite 400  
Raleigh, NC 27601

**DESIGN-BUILDER:**

*(Name and address)*

**PROJECT:**

Sidewalk Improvements to Fox Road, Lead Mine Road, North Hills Drive, Pecan Road, and Wade Avenue.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein. All capitalized terms shall have the meaning given them in this Agreement and/or in DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (As Modified by the Parties) (2022 Edition) (the "General Conditions of Contract").

## Article 1

### **Design-Builder's Services and Responsibilities**

#### Scope of Work / General Provisions

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools, and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

1.1.1 Any and all design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional or Design Consultant engaged by Design-Builder.

1.2 Owner and Design-Builder commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

1.3 Owner's Budget for the Project is \$\_\_\_\_\_. Notwithstanding any provision of this Agreement to the contrary, the price for Phase 1 and Phase 2 Services shall not exceed \$\_\_\_\_\_ unless Owner agrees in writing through a written amendment to this Agreement.

#### 1.4 **Owner's Project Criteria.**

1.4.1 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, as applicable, 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.

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

#### 1.5 **Phased Services.**

1.5.1 **Phase 1 Services.** Design-Builder shall perform the Phase 1 Services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.4 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 Services, as set forth in Section 1.6 hereof. The Contract Price for Phase 2 Services shall be developed during Design-Builder's performance of the Phase 1 Services on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Article 6 hereof. 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).

1.5.2 **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 all construction services for the Project; the start-up, testing, and commissioning of the Project, if applicable; and the provision of warranty services, all as further described in the Contract Price Amendment as defined in Section 1.6.2.2 hereof. Upon receipt of Design-Builder's proposed Contract Price for Phase 2 Services, Owner may proceed as set forth in Section 1.6.2 hereof. If Owner elects not to proceed with Phase 2 Services, Phase 1 Services shall include completion of the design and issuance of completed construction drawings for the Project.

1.6 **Proposal.** Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which at Owner's sole election, shall be based upon either: (a) a fixed, lump sum pricing ("Lump Sum") or b) Cost of the Work plus Design-Builder's Fee plus Design-Builder's Contingency plus Owner's Contingency, subject to a Guaranteed Maximum Price ("GMP").

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

1.6.1.1 The Contract Price, which at Owner's sole election, shall be based on a Lump Sum or Design-Builder's Fee plus the Cost of the Work, subject to a GMP. If the latter, the Contract Price shall be the sum of:

- i Design-Builder's Fee as defined in Section 6.2 hereof;
- ii The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of Design Builder's general conditions costs as set forth in Section 6.3 hereof and Design-Builder's Contingency as defined in Section 6.6.2.1.4 hereof; and
- iii Owner's Contingency as defined in Section 6.7 hereof.

1.6.1.2 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;

1.6.1.3 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;

1.6.1.4 The Scheduled Final Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2. hereof, and a schedule upon which the Scheduled Final Completion Date is based and a Project Schedule for the Work;

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

1.6.1.6 If applicable, a schedule of alternate prices;

1.6.1.7 If applicable, a schedule of unit prices;

1.6.1.8 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);

1.6.1.9 If applicable, a Savings provision;

1.6.1.10 If applicable, Performance Incentives;

1.6.1.11 The time limit for acceptance of the Proposal, which shall not be fewer than thirty (30) days; and

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

## 1.6.2 Review and Adjustment to Proposal.

1.6.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss, review, and negotiate 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.

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

1.6.2.3 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 1.6.2.2 hereof;
- 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;
- iii Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; and/or
- iv Owner may require Design-Builder to assign some or all of Design-Builder's contracts with its Design Consultants to complete the design Work for the Project and, at Owner's sole election, continue to serve as design professionals for the Project on either a lump sum amount or an hourly rate basis in connection with the construction of the Project by a third party. After the assignment of the Design Consultant contracts to Owner, Design-Builder shall have no further liability or obligations to Owner under this Agreement other than those obligations that this Agreement or the General Conditions of Contract state shall survive termination, completion, or expiration of the Agreement.

If Owner fails to exercise any of the above options, Design-Builder shall have the right, upon providing Owner an additional ten (10) days' notice and opportunity to exercise one of the above options, to (a) stop performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, or (b) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.6.2.3 hereof 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 1.6.2.3(iii) hereof, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further obligations to Owner under this

Agreement other than those obligations that this Agreement or the General Conditions of Contract state shall survive termination, completion, or expiration of the Agreement.

## **Article 2**

### **Contract Documents**

- 2.1 The Contract Documents are comprised of the following:
- 2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the General Conditions of Contract, including without limitation the Contract Price Amendment, if applicable;
  - 2.1.2 If applicable, the Proposal accepted by Owner in accordance with Section 1.6.2.2 hereof;
  - 2.1.3 This Agreement, including all Exhibits specifically enumerated in Section 11.2 hereof; and
  - 2.1.4 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

## **Article 3**

### **Interpretation and Intent**

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the Proposal by Owner in accordance with Section 1.6.2.2 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 execution of the Agreement, or if applicable, 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.

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 shall be 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 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.

3.6 The Contract Documents may be supplemented from time to time with additional or supplemental drawings prepared by Design-Builder as may be required to illustrate the Work, subject to the approval of Owner. Supplementary drawings, when issued by Design-Builder after approval by Owner, shall be furnished in sufficient quantity to all those who, in the opinion of Owner, are affected by such drawings.

## Article 4

### **Ownership of Instruments of Service**

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

4.2 **Ownership.** So long as Owner complies with its payment obligations under this Agreement, all Instruments of Service prepared by Design-Builder, along with all intellectual property rights for such Instruments of Service, shall be Owner’s property, and Owner shall be entitled to use and dispose of the Instruments of Service at its discretion. Owner, however, shall not re-use, modify, or alter the Instruments of Service without first removing all references to Design-Builder and its employees. Design-Builder assigns to Owner the sole ownership of any copyright and all works created pursuant to this Agreement. If requested by Owner, Design-Builder will execute and will secure execution by its personnel and Design Consultants of additional documents as Owner may deem necessary to affect the purposes of this paragraph. If requested by Owner, Design-Builder shall provide Owner with all CAD files and the electronic drawing files related to the Project.

4.3 **Owner’s Limited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Instruments of Service to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, provided that use of the Instruments of Service is at Owner’s sole risk.

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

4.5 Intentionally omitted.

## Article 5

### **Contract Time**

5.1 **Dates of Commencement.** The Phase 1 Services shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed with such services unless the parties mutually agree otherwise in writing (the “Phase 1 Date of Commencement”). Unless the parties mutually agree otherwise in writing, if the Proposal is accepted and the Contract Price Amendment is appended to this Agreement, the Phase 2 Services shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed with such services (the “Phase 2 Date of Commencement”).

## 5.2 Final Completion.

5.2.1 Final Completion of the entire Work shall be achieved no later than the date set forth in the Contract Price Amendment (the "Scheduled Final Completion Date").

5.2.2 Interim milestones and/or Final Completion of identified portions of the Work shall be achieved as may be agreed upon at the completion of the Phase 1 Services and in the Contract Price Amendment.

5.2.3 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 (collectively, the "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. It is hereby understood and mutually agreed by and between Design-Builder and Owner that the time for completion of all Phase 1 Services and Phase 2 Services to be performed hereunder are essential conditions of this Agreement.

5.3.1 Design-Builder agrees that the Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the Contract Time(s) set forth in the Contract Documents. It is expressly understood and agreed, by and between Design-Builder and Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in the locality of the Project. It is further agreed that in the event the Phase 2 Services are not finally completed by the Scheduled Final Completion Date, that Owner may retain from compensation otherwise due Design-Builder the stipulated amounts per day for each day thereafter, Saturdays, Sundays and holidays included, that the Work remains uncompleted, pursuant to Section 5.4 hereof.

5.3.2 During the performance of Phase 2 Services, Design-Builder shall monitor the progress of the Work for conformance with the requirements of the current Project Schedule (as defined in Section 2.1.3 of the General Conditions of Contract) and shall promptly advise Owner of any delays or potential delays to achieving Final Completion. If, at any time during the progress of the Work, Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents and/or the current Project Schedule, and/or that Design-Builder's actual progress is inadequate to meet the requirements for Final Completion, Owner shall have the right to order Design-Builder to take corrective measures, without an increase to the Contract Price or the GMP, necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and/or the current Project Schedule.

5.3.2.1 Design-Builder shall not be entitled to an adjustment in the Contract Price, the GMP, and/or the Contract Time(s) in connection with Extraordinary Measures required by Owner.

5.3.2.2 Owner may exercise the rights furnished to it pursuant to Section 5.3.2 hereof as frequently as Owner deems necessary to ensure that Design-Builder's performance of the Work will comply with the Final Completion date set forth in the Contract Documents, as such date may be amended by Change Order or other modification to the Agreement.

5.3.3 If Abnormal Weather Conditions are the basis for a request for an equitable adjustment in the Contract Time(s), such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred; 2) that such weather conditions could not have been reasonably anticipated; and 3) that such weather conditions adversely affected an activity on the critical path to completion of the Work, as of the time of the weather condition.

5.3.3.1 The existence of Abnormal Weather Conditions will be determined on a month-by-month basis in accordance with the following:

- a. "Bad Weather Day" means a workday where weather conditions adversely affect the Work and the impacted Work is on the critical path.
  - i. Determination of actual Bad Weather Days during performance of the Work will be based on weather at the Site. When Site weather data is not available, use nearest USGS weather station data.
  - ii. A workday after a daily rainfall amount greater than 1 inch will be considered an additional Bad Weather Day, subject to having an adverse effect on the Work as scheduled.
- b. Foreseeable Bad Weather Days: determination of Foreseeable Bad Weather Days during performance of the Work will be based on the weather records measured and recorded by the National Oceanic & Atmospheric Administration, National Centers for Environmental Information (NOAA-NCEI) at the nearest weather monitoring station. For example, one source of weather records is from the NOAA-NCEI website: <https://www.ncdc.noaa.gov/cdo-web/datatools/normals>. From the website, click on the "View Station Report" link to find the Summary of Monthly Totals report.
  - i. Design-Builder shall anticipate and factor into its Proposal and Project Schedule the number of Foreseeable Bad Weather Days per month.
- c. "Abnormal Weather Conditions" means the total Bad Weather Days in each month minus the Foreseeable Bad Weather Days.
  - i. The existence of Abnormal Weather Conditions will not relieve Design-Builder of the obligation to demonstrate and document that delays caused by Abnormal Weather Conditions are specific to the planned Work activities or that such activities thus delayed were on Design-Builder's then-current Project Schedule's critical path for achieving the Scheduled Final Completion Date.

5.4 **Liquidated Damages.** Design-Builder understands that if Final Completion is not attained 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 attained by the Scheduled Final Completion Date (the "LD Date"), Design-Builder shall pay Owner Dollars as liquidated damages for each day that Final Completion extends beyond the LD Date.

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 the Scheduled Final Completion Date or Scheduled Interim Milestone Dates (if any).

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 fourteen (14) 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 fourteen (14) days of receipt by Owner.

## Article 6

### Contract Price

#### 6.1 Contract Price.

6.1.1 Phase 1 Services. For Phase 1 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the [fixed price] / [not to exceed sum] of \$\_\_\_\_\_ 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 Phase 2 Services. 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 either (a) the Lump Sum amount set forth in the Contract Price Amendment or (b) the Cost of the Work (as defined in Section 6.3 hereof) plus Design-Builder's Fee (as defined in Section 6.2 hereof), subject to any GMP established in Section 6.6 hereof or in the Contract Price Amendment. In the event the parties agree in the Contract Price Amendment consisting of a Lump Sum, then all of Sections 6.2 – 6.6 hereof, with the exceptions of Section 6.2.2 and Section 6.4, shall be deemed null and void and of no force or effect. Design-Builder's compensation for Phase 2 Services shall be subject to any adjustments that may be made in accordance with the requirements of the General Conditions of Contract.

#### 6.2 Design-Builder's Fee.

6.2.1 Design-Builder's Fee shall be:

*[Choose one of the following.]*

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), as adjusted in accordance with Section 6.2.2 below.

or

\_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

Or

negotiated at the time of the Contract Price Amendment.

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

6.2.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of \_\_\_\_\_ percent (\_\_\_\_\_ %) of the additional Costs of the Work.

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

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

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

6.3.1 Payroll costs for employees in the direct employ of Design-Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design-Builder at the time of execution of the Contract Price Amendment. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full-time on the Work. Payroll costs for employees not employed full-time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. Labor will be based on direct labor cost, and Design-Builder shall provide certified payroll upon Owner's request. No claims for extra cost shall be considered based on an escalation of labor costs throughout the period of the Contract.

6.3.2 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.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices and performing the functions set forth in the Contract Price Amendment. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a \_\_\_\_ percent (\_\_\_%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.3.4 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 6.3.1 through 6.3.3 hereof; provided, however, that in no event shall merit pay, bonuses, incentive compensation, and the like be considered Cost of the Work.

6.3.5 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.

6.3.6 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.

6.3.7 Intentionally omitted.

6.3.8 Costs, including transportation, inspection, testing, storage, and handling, of materials, equipment, and supplies incorporated or reasonably used in completing the Work. No claims for extra cost shall be considered based on material cost escalation throughout the period of Design-Builder's performance of the Agreement; provided, however, that Design-Builder may utilize the Design-Builder Contingency to cover such cost escalation pursuant to Section 6.6.2.1.4 hereof.

6.3.9 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.

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

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

6.3.12 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.

6.3.12.1 Rental costs shall be in accordance with the terms of applicable rental agreements. The rental of any equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

6.3.12.2 Full rental cost for rented, leased, and/or owned equipment shall not exceed rates listed in the current version of [Rental Rate Blue Book for Construction Equipment (Blue Book) or AED Green Book: Rental Rates & Specifications for Construction Equipment (Green Book)]. If rental rates for the equipment being used for the Work are not listed in the [Blue/Green] Book, Design-Builder will receive the prevailing rental rates being paid for such equipment in the area where the Project is located. Computed durations will be based upon the Work completed. Computed rates will include all operating costs; costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools. The Engineer/ Owner reserves the right to request four rental quotes as backup.

6.3.12.3 The hours of operation shall be based upon actual equipment usage to the nearest full hour, as recorded by Design-Builder or one of its Derivative Parties.

<b>Table 6.3.12.3   Equipment Usage</b>	
<b>USAGE</b>	<b>Blue/Green Book Payment Category</b>
Less than 8 hours	<i>Hourly Rate</i>
8 or more hours but less than 4 days	<i>Daily Rate</i>
	<i>Weekly Rate</i>

4 or more days but less than 16 days	
16 or more days	<i>Monthly Rate</i>

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

6.3.14 All fuel and utility costs, including without limitation charges of utility owner for connections for providing permanent service to the Work, incurred in the performance of the Work.

6.3.15 Sales, use, or similar taxes, tariffs or duties incurred in the performance of the Work. However, reimbursable sales and use taxes paid to the State of North Carolina or to local governments in North Carolina shall be included or excluded from the Cost of the Work as described in Section 7.6 hereof.

6.3.16 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.

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

6.3.18 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.

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

6.3.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property, including, without limitation, costs associated with safety programs, safety managers, and safety representatives.

6.3.21 Accounting and data processing costs related to the Work.

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

6.3.23 Other general conditions costs not referenced above, which may include, without limitation, the following:

6.3.23.1 Costs incurred by Design-Builder to comply with Legal Requirements; and

6.3.23.2 Contract administration costs, including costs for:

- a. Meeting, reporting, notifications, and other communications and coordination;
- b. Document management;
- c. Submittals, record data, and other documentation,

- d. Creating, maintaining, and updating the Project Schedules per Section 2.1.3 of the General Conditions of Contract,
- e. Changes to the Agreement per Article 9 of the General Conditions of Contract,
- f. Applications for Payment per Section 6.2 of the General Conditions of Contract, and
- g. Maintenance of Record Documents.

Owner reserves the right at the time of Contract Price Amendment to negotiate compensation for Design-Builder's general conditions costs to be converted to a percentage of the Cost of the Work and reduced to a fixed sum. In such event, Design-Builder's general conditions costs shall not be separately reimbursable as Cost of the Work.

#### **6.4 Allowance Items and Allowance Values.**

6.4.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Proposal and Contract Price Amendment and are included within the Contract Price and/or the GMP.

6.4.2 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.

6.4.3 No Work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item 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), the Contract Price, and/or the GMP.

6.4.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. The Allowance Value for each Allowance Item shall include the Cost of the Work (including Design-Builder's general conditions cost) and Design-Builder's Fee associated with each such 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, regardless of the actual amount of the Allowance Item.

6.4.5 Unused allowances shall be reallocated to the Owner's Contingency.

#### **6.5 Non-Reimbursable Costs.**

6.5.1 The following shall not be deemed as Costs of the Work:

6.5.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

6.5.1.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

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

6.5.1.4 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.

***[If the parties do not use a GMP, this Section 6.6 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 (“GMP”).

**6.6.1 GMP Established Upon Execution of this Agreement.**

Inapplicable and intentionally omitted.

**6.6.2 GMP Established after Execution of this Agreement.**

6.6.2.1 If the Contract Price Amendment establishes a Contract Price based upon Design-Builder’s Fee plus the Cost of the Work subject to a GMP, then the following provisions shall apply:

6.6.2.1.1 The GMP and its basis shall be set forth in the Contract Price Amendment;

6.6.2.1.2 Design-Builder guarantees that it shall not exceed the GMP set forth in the Contract Price Amendment;

6.6.2.1.3 Design-Builder does not guarantee any specific line item provided as part of the GMP; provided, however, that if Design-Builder’s general conditions costs are reduced to a fixed sum pursuant to Section 6.3 hereof, it does guarantee the line item for its conditions costs in the amount set forth in the Contract Price Amendment (“General Conditions Cap”), in which event Design-Builder agrees that it will be responsible for paying any and all general conditions costs in excess of the General Conditions Cap in addition to paying any and all costs of completing the Work that might exceed the GMP, as said general conditions line item and GMP may be adjusted in accordance with the Contract Documents.

6.6.2.1.4 The GMP shall include a Design-Builder’s Contingency in the amount set forth in the Contract Price Amendment 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) material cost escalations; (d) costs to address unforeseen Underground Facilities; (e) correction of defective, damaged, or nonconforming Work, design errors or omissions, however caused; (f) Subcontractor defaults; (g) Tariffs; or (h) extended field costs caused by Force Majeure Events, minor changes in the Work, acts of third parties not engaged by the Owner, or governmental actions for which the Owner is not responsible that result in an extension of the Contract Time(s) in excess of ten (10) cumulative days, as set forth in Section 8.2.2 of the General Conditions of Contract. The Design-Builder’s Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Design-Builder’s Contingency and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Design-Builder’s Contingency, including all reasonably foreseen uses or potential uses of the Design-Builder’s Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Design-Builder’s Contingency relating to a

Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company of the Subcontractor. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Design-Builder's Contingency. For the Contract Price Amendment, the Design-Builder's Contingency shall be based on a percentage of the Cost of the Work, and Owner reserves the right to negotiate a lump sum Design-Builder's Contingency amount at the time of the Contract Price Amendment negotiations. The Design-Builder's Contingency cannot be utilized for any purpose until Design-Builder submits a Cost Change Proposal to Owner and receives written approval from Owner in connection with such proposal, which approval shall not be unreasonably withheld. Any unused Design-Builder's Contingency shall be returned to Owner.

**6.7 Owner's Contingency.**

An Owner's Contingency in an amount determined by Owner in its sole discretion shall be included in the Contract Price and/or GMP. Expenditures against the Owner's Contingency will be available to cover all costs resulting from changes in scope initiated by Owner via a Cost Change Proposal issued by Owner.

## **Article 7**

### **Procedure for Payment**

**7.1 Progress Payments.**

7.1.1 Design-Builder shall submit to Owner on the fifth (5th) day of each month, beginning with the first month after the Phase 1 Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract. All Applications shall be submitted through Owner's Project Management Software.

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

7.1.3 If Design-Builder's Fee under Section 6.2.1 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.

**7.2 Retainage on Progress Payments.**

7.2.1 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 with written consent of surety shall adjust future partial payments so that two and one-half percent (2.5%) of the Contract Price is retained. Owner will also reasonably consider reducing retainage for Subcontractors completing their Work early in the Project.

7.2.1.1 The Project shall be deemed fifty percent (50%) complete when Design-Builder's gross Project invoices, excluding the value of materials stored off-site, equal or exceed fifty

percent (50%) of the value of the Contract Price, except the value of materials stored on-site shall not exceed twenty percent (20%) of Design-Builder's gross Project invoices for the purpose of determining whether the Project is fifty percent (50%) complete.

7.2.1.2 If Owner determines it is appropriate to reduce retainage, the method used for such adjustment shall be to fix retainage at two and one-half percent (2-1/2%) of the original Contract Price (when the Work is 50% complete) and to pay all subsequent monthly progress payment amounts to the full approved amount. The intent of such an adjustment is to gradually reduce retainage to two and one-half percent (2-1/2%) of the original Contract Price when the Work is 100% complete. Following 50% completion of the Project, Owner may also withhold additional retainage from any subsequent periodic payment, not to exceed five percent (5%), in order to allow Owner to retain two and one-half percent (2-1/2%) total retainage through the completion of the Project.

7.2.1.3 If Owner determines that Design-Builder's performance is unsatisfactory, then Owner may reinstate retainage for each subsequent periodic payment application up to the maximum amount of five percent (5%).

7.2.1.4 Retainage provisions contained in Design-Builder's subcontracts may not exceed the terms and conditions for retainage provided herein. Design-Builder is further required to satisfy the retainage provisions of N.C.G.S. 143-134.1(b2) with regard to subcontracts for early finishing trade Subcontractors (e.g., structural steel, piling, caisson, and demolition) and to coordinate the release of retainage for such trade Subcontractors from the retainage withheld from Design-Builder by Owner pursuant to statute.

7.2.2 Within thirty (30) days after Final 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 Final Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract. Notwithstanding the provisions of this Section 7.2.2, any reduction in the amount of the retainage withheld on progress payments shall be made only with the prior written consent of Design-Builder's performance and payment bond surety.

7.2.3 Nothing in this Section 7.2 or other provision of the Contract Documents shall prevent Owner from withholding payment to Design-Builder in addition to the amounts identified in this Section 7.2 for unsatisfactory job progress, defective construction not remedied, disputed Work, or third-party claims filed against Owner or reasonable evidence that a third-party claim will be filed.

7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with 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 thirty (30) days after Owner's approval of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in the General Conditions of Contract.

7.4 Intentionally omitted..

7.5 **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. Owner's right to conduct an audit and/or access Design-Builder's financial records are set forth in Section 13.12 of the General Conditions of Contract

## 7.6 Sales and/or Use Taxes.

7.6.1 Design-Builders and its Subcontractors are required to pay North Carolina Sales and/or Use Taxes and County Sales Taxes where applicable on all equipment and materials incorporated into the Project. Owner is qualified to receive rebate of the amount of such Sales Taxes as are paid on materials and/or equipment incorporated into the Project. Pursuant to North Carolina General Statutes § 105-164.14, Owner is eligible for Sales and Use Tax refunds on all materials which become a permanent part of the construction of the Project. Design-Builder agrees to provide Owner documentation which meets the requirements of Sales and Use Tax Regulation 42 regarding requests for refund of sales and use taxes. Those requirements are outlined below:

7.6.2 All refund claims must be substantiated by proper documentary proof, and only those taxes actually paid by the claimant (Owner) during the fiscal year covered by the refund claim may be included in the claim. Any local sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's sales and use tax has been paid, a breakdown must be attached to the claim for refund showing the amount of each county's local tax separately.

7.6.2.1 To substantiate a refund claim for sales and use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its Design-Builder, the claimant must secure from such Design-Builder certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales and/or use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from Design-Builder's warehouse stock and the amount of state and local sales or use tax paid therein by Design-Builder. Similar certified statements by Design-Builder's Subcontractors must be obtained by Design-Builder and furnished to the claimant (Owner). Any local sales or use taxes included in Design-Builder's statement must be shown separately from the state sales or use taxes. Design-Builder's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such design-builders for use in performing the Agreement which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the governmental entities as defined by N.C.G.S. 105-164.14(c). Examples of property on which sales and use tax has been paid by Design-Builder and which should not be included in Design-Builder's statement are scaffolding, forms of concrete, fuel for the operation of machinery and equipment, tools, equipment repair, parts and equipment rentals, blueprints, etc.

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

## **Article 8**

### **Termination for Convenience**

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

8.1.1 All services adequately performed and Work accepted by Owner and for proven loss, cost, or expense in connection with the services and Work through the date of termination;

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

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

8.2 If Owner terminates this Agreement pursuant to this Article 8 and proceeds to design and construct the Project through its employees, agents, or third parties, Owner's rights to use the Instruments of Service shall be as set forth in Article 4 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

## **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 shall procure the insurance coverages set forth in the Exhibit F – Design-Builder's Insurance Requirements attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 **Bonds and Other Performance Security.** Within 15 days of execution of the Contract Price Amendment and as a condition precedent to commencing any construction Work at the Project, Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

**Performance Bond.**

The Performance Bond shall be in an amount not less than 100% of the Contract Price and/or GMP for the Phase 2 Services as security for the faithful performance of the Work. The Performance Bond must be valid until at least one (1) year after the date of issuance of the certificate of Final Completion for the Project and be in a form satisfactory to Owner.

Required                       Not Required

**Payment Bond.**

The Payment Bond shall be in an amount not less than 100% of the Contract Price and/or GMP for the Phase 2 Services as security for the payment of all persons performing labor and furnishing material in connection with the Work. The Payment Bond must be valid until at least one (1) year after the date of issuance of the certificate of Final Completion for the Project and be in a form satisfactory to Owner.

Required                       Not Required

Other Performance Security.

Required                       Not Required

**Article 11**

**Other Provisions**

**11.1 Other provisions, if any, are as follows:**

11.1.1 Non-Discrimination. To the extent permitted by North Carolina law, the parties, for themselves, their agents, officials, directors, officers, members, representatives, employees, and contractors, agree not to discriminate in any manner or in any form based on actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status, or national origin in connection with this Agreement or its performance. The parties agree to conform with the provisions and intent of Raleigh City Code § 4-1004 in all matters related to this Agreement. This provision is incorporated into the Agreement for the benefit of Owner and its residents and may be enforced by an action for specific performance, injunctive relief, or any other remedy available at law or equity. This section shall be binding on the successors and permitted assigns of all parties with reference to the subject matter of this Agreement.

11.1.2 Design-Builder shall comply with Owner’s Minority and Women-Owned Business Enterprise (MWBE) Program.

11.1.2.1 Owner prohibits discrimination in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation and will pursue an affirmative action policy of fostering, promoting, and doing business with women and minority-owned business enterprises.

11.1.2.2 Owner’s goal on construction projects of \$300,000 or more, or on construction contracts that include \$100,000 or more in state funding, is to contract or sub-contract fifteen percent (15%) of the Contract Price to Certified MWBEs. Owner, subject to the requirements of state law and City of Raleigh policy, requires documentation of good faith efforts for meeting established MWBE participation goals. Owner’s MWBE policy and the

applicable North Carolina General Statutes are hereby incorporated into and made a part of this Agreement. Design-Builder shall submit its plan for compliance with G.S. 143-128.2, "Minority Business Participation Goals," for approval by Owner prior to soliciting bids for any of the Project's Subcontractors. Design-Builder shall ensure that it and its Subcontractors will make good faith efforts to recruit and select small business entities and comply with G.S. 143-128.2 and G.S. 143-128.4.

11.1.2.3 Design-Builder and its Subcontractors shall comply in all respects with Owner's MWBE policies, rules, and regulations, including, without limitation, Owner's stated goal to contract or sub-contract fifteen percent (15%) of the Contract Price to Certified MWBEs.

11.1.2.4 To increase MWBE participation, and if necessary to achieve Owner's stated goal to contract or sub-contract fifteen percent (15%) of the Contract Price to Certified MWBEs, Design-Builder may, with the written approval of Owner's Representative, offer the participation of Design-Builder as a guarantor or surety in the financing of materials purchased by Certified MWBE Subcontractors, provided that Design-Builder may condition such financing assistance upon a Certified MWBE Subcontractor's acceptance of the issuance of joint checks or other similar arrangements to allow Design-Builder to verify that timely payments are made to suppliers furnishing credit to the Certified MWBE Subcontractor.

11.1.2.5 Design-Builder shall identify subcontract packages that remove barriers to participation commonly experienced by Historically Underutilized Businesses (HUB), as that term is defined in G.S. 143-128.2.

11.1.2.6 In furtherance of achieving Owner's stated goal to contract or sub-contract fifteen percent (15%) of the Contract Price to Certified MWBEs, and prior to Design-Builder soliciting bids from any potential Subcontractors, Design-Builder shall develop, review with Owner for approval, and implement procedures and policies regarding the following:

- Outreach and networking to Certified MWBEs
- participation of Certified MWBEs during preconstruction
- Community meetings to identify and recruit Certified MWBEs for participation in the Project
- Supporting Owner's Workforce Development program
- Providing certification assistance to applicants seeking Certified MWBE status
- Payment handling with respect to Certified MWBEs participating in the Project
- Change order handling with respect to Certified MWBEs participating in the Project
- Bonding assistance for Certified MWBEs participating in the Project
- Partnering with Subcontractors and Sub-Subcontractors to achieve the Owner's MWBE participation goals for the Project
- Handling of rental and leased equipment required by Certified MWBEs in the performance of the construction Work

11.1.2.7 Design-Builder shall participate in and shall lead meetings regarding MWBE, HUB, and DBE-related issues, including but not limited to contracting, outreach, and partnering.

11.1.3 Professional Conduct. At no time during the course of the Project shall any of Design-Builder's personnel or any personnel of Subcontractors or Sub-Subcontractors behave in an unprofessional, inappropriate, or abusive manner on the job site or in any meetings or conferences involving Owner or anyone associated with the Project. Unprofessional, inappropriate, abusive, uncooperative behavior shall be grounds for dismissal of Design-Builder's personnel, Subcontractors' personnel, and/or Sub-Subcontractors' personnel from the Project. No alcoholic beverages or narcotics of any description will be allowed on the job site at any time. Furthermore, anyone under the influence of alcohol or narcotics shall be removed from the job site immediately. A second offense involving Design-Builder's personnel, Subcontractors' personnel, and/or Sub-Subcontractors' personnel under the influence of alcohol or narcotics on the job site shall constitute grounds for automatic, permanent dismissal from any further Work on the Project.

11.1.4 Design-Builders' Personnel. If Design-Builder elects to change team members from their proposed organization chart presented in their Statement of Qualifications, Design-Builder must submit to Owner their proposed change and the resume of the proposed replacement individual. Owner shall have the authority to approve the change or disapprove and request an alternative solution. The decision for approval or disapproval shall be final and binding.

11.2 Listing of Exhibits and documents incorporated herein and included among the Contract Documents:

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

Exhibit C -- *DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (As Modified by the Parties) (2022 Edition)* ("General Conditions of Contract")

Exhibit D --- City of Raleigh MWBE Program and Acknowledgement Form

Exhibit E -- Procedure for Reporting North Carolina Sales Tax Expenditures on City of Raleigh Contracts

Exhibit F -- Design-Builder's Insurance Requirements

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

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.

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.**

The license for use of this document expires 1 year from the date of purchase.  
To renew your license, visit [store.dbia.org](https://store.dbia.org).

Questions? We're here to help.

# Contact us



**Design-Build Institute of America**  
1001 Pennsylvania Ave. NW, Suite 410  
Washington, DC 20004

(202) 682-0110  
[dbia@dbia.org](mailto:dbia@dbia.org)