



City of Charlotte, NC

**Request for Qualifications for  
Progressive Design-Build Services for  
Charlotte Fire Department  
River District  
Firehouse 44 – Phase II  
RFQ #: 269-2024-114**

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

**DATE ISSUED:** May 16, 2024

**OWNER:**

City of Charlotte

**PROJECT:**

Charlotte Fire Department River District Firehouse 44 - Phase II  
Dixie River Road  
Charlotte, NC

**OWNER CONTACT PERSON:**

Sadia Khan; [sadia.khan@charlottenc.gov](mailto:sadia.khan@charlottenc.gov)

**SOQ DUE DATE AND TIME**

Respondent’s SOQ shall be submitted no later than: June 20, 2024, 2024 at 3:00 p.m.

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

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FORM 3 - GENERAL BACKGROUND OF DESIGNER

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FORM 5 - CHARLOTTE MWSBE PARTICIPATION PLAN

FORM 6 - AFFIDAVITS

FORM 6A - AFFIDAVIT FOR CORPORATION

FORM 6B - AFFIDAVIT FOR LIMITED LIABILITY COMPANY

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FORM 6D - AFFIDAVIT FOR JOINT VENTURE

FORM 7 - COMMERCIAL NON-DISCRIMINATION CERTIFICATION

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FORM 9 - BYRD ANTI-LOBBYING CERTIFICATION FORM 10 - SENSITIVE INFORMATION DISTRIBUTION

## **EXHIBITS**

EXHIBIT A – DETAILED SCOPE OF WORK

EXHIBIT B – DETAILED PROJECT SCHEDULE

EXHIBIT C – SAMPLE MWSBE OUTREACH PLAN

EXHIBIT D - SAMPLE CONTRACT

**SECTION 1: OWNER DESCRIPTION**

**1.1 General**

The City of Charlotte (City) is seeking Progressive Design-Build services to design and construct the Charlotte Fire Department River District Firehouse 44 – Phase II (Project). The River District Firehouse will be owned and operated by Charlotte Fire Department and will serve residents located in the River District of Charlotte.

Respondents will need to assemble a team of experts, including but not limited to, design, sustainability professional, surveying, permitting, construction, start-up, and provide technical input for the public communications plan for the execution of this project.

Respondents may only submit one proposal in response to this RFQ. The City reserves the right to make final decisions regarding the utilization of subcontractors/subconsultants and to require the removal and replacement of any personnel of the awarded team. For instance, if a contractor submits a proposal with multiple design subconsultants, the City may determine which designer (or combination of designers) is to be utilized.

**1.2 Funding/Authority**

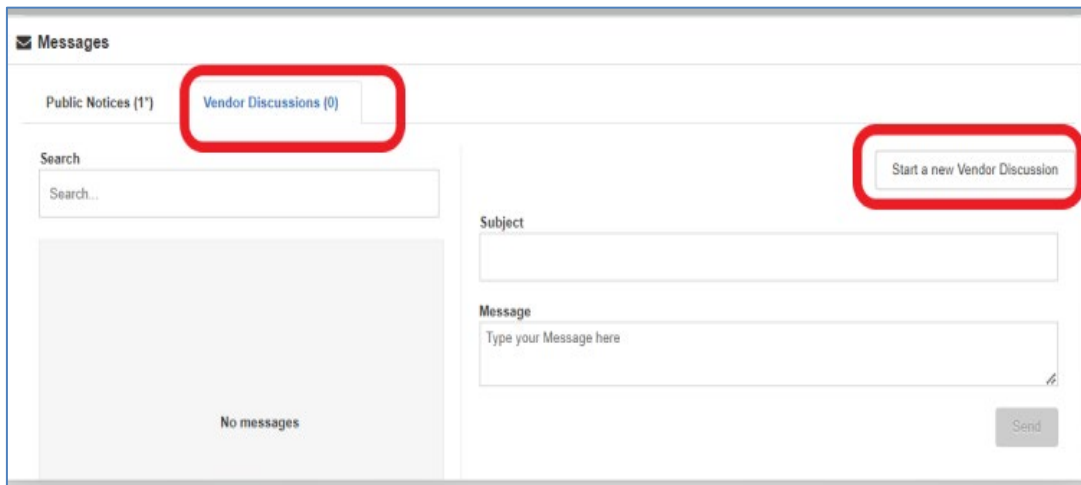
Funding for this project is included in Community Investment Program.

**1.3 Procurement Website**

The full RFQ document, addenda, clarifications, and all other related information will be posted electronically through the Bonfire e-Procurement Portal (“Procurement Portal” - <https://charlottenc.bonfirehub.com>). Each Respondent is responsible for checking the website to obtain the latest information.

Questions related to this solicitation must be submitted the following way:

Submit your question via the **Vendor Discussion** section on the [Procurement Portal](#):



## **SECTION 2: OVERVIEW OF PROJECT**

### **2.1 General**

The City is seeking to award a contract to a design-build firm for a new two-story, approximately 14,600-square-foot facility located on Dixie River Road (Parcel Number 14128101 – Parcel 3). The facility will house the Charlotte Fire Department (“CFD”) River District firefighters. The new firehouse will be all-electric and have a mass timber structural system and include 3 bays for fire trucks. It is anticipated the facility will achieve LEED Certification (minimum of Certified), as well as IFLI’s Zero Carbon Certification. The building will also incorporate a geothermal system for HVAC, infrared bay heating as well as for domestic hot water.

### **2.2 Project Objectives**

The overall Project objective is to design and construct the most effective firehouse to date through the strategies below:

- Design and construct a firehouse that will achieve design and construction excellence through innovative practices and applications.
- Maintain a safe, injury free work site.
- Minimize any scheduling, budgeting, and operational impacts to the Owner through close coordination and timely communication with the Owner, subcontractors, consultants, vendors, and its customers.
- Have the facility designed and constructed taking into consideration the criteria in the LEED Building Standard, and following the City’s Sustainable Facilities Policy approved by Charlotte City Council on April 22, 2024.
- Design the facility in a way that enables it to be integrated into and reflective of the culture of the community it is located within the River District.
- Design the Facility based on City of Charlotte and Charlotte Fire Department input through the stages of design regarding building specifications and operational requirements.
- Provide up-to-date documentation on any requested and agreed upon program requirements from City and CFD to minimize changes are made during construction
- Complete the project on time and within the City’s budget and optimize lifecycle costs with initial capital costs.
  - Provide a project that reliably meets or exceeds all regulatory and permitting requirements.
  - Provide a project that supports the City’s energy & sustainability goals through innovative and practical technologies, processes, or practices that take into account the City’s targets such as the Strategic Energy Action Plan (SEAP) which strives to have facilities that use zero-carbon sources and LEED certification principles for buildings. Information on the City plan can be found at the following website link:  
  
<https://charlottenc.gov/sustainability/seap/Pages/default.aspx>
- Provide seamless transition of the new facility to the City’s operations and maintenance team.
- Maximize contracting opportunities with City certified and registered Minority, Women, Small Business Enterprise (MWSBE) firms.

- The City has a public art policy for capital projects involving certain buildings and public visibility that typically allocates an average of 1% of the project construction costs to art features in the facility/project. The program is administered by the Arts and Science Council. It is anticipated that publicly accessible portions of this project will need to comply with this policy. Information on the policy can be found in the following website link:

<https://charlottenc.gov/charlottefuture/Pages/PublicArt.aspx>

## 2.3 **Scope of Work**

### Project Work Scope Overview

The Design-Builder will work with the City and the Owner's Advisor (Jones Lang Lasalle Americas, Inc.) to determine the final layout, sizing, and specific facilities to meet the goals of the City for the Project. The Design-Builder will provide the resources and staff to deliver the final project that will include, but not be limited to:

- Facility Planning and Preliminary Design - The Design-Builder will provide resources needed to provide any additional planning and design information (i.e., geotechnical studies, surveying, testing, site visits, analyses, etc.). The City desires to work with the design build team to develop a project scope that incorporates creativity and innovation relative to costs, schedule, and reliability.
- Permitting –The Design-Builder will provide the expertise and resources to manage all permitting to be completed and work with the City and the regulatory agencies to successfully obtain all required permits.
- Public Communication – The Project has the potential to be a high-profile project. The CFD, City and the Design-Builder will be an integral part of the established communications plan. The Owner's Advisor will have the lead role in the communication plan with the design-build teams providing technical input for information and technical graphics relative to their specific projects.
- Detailed Design - The Design-Builder will provide the resources and expertise to complete the design of a well-performing and reliable CFD River District firehouse that meets or exceeds all regulatory requirements, operations and maintenance goals of the Project.
- Cost Estimating – Budget is critical on the Project and the Design-Builder will be expected to have a high degree of accuracy of cost estimating at all phases of design such that development of the final GMP proceeds seamlessly. Design-Builder is also expected to coordinate with City's third party cost estimator to reconcile cost estimates.
- Construction - Provide excellent construction expertise, management, and resources to complete the project safely, on schedule, and within budget.

Detailed Scope of Work can be found in Exhibit A.

### Project Schedule

The City of Charlotte River District Firehouse 44 Phase II Project shall start construction September 1, 2025, with Substantial Completion taking place September 21, 2026 and completed and placed into operation by November 16, 2026. When the Design-Builder is onboard with an executed agreement the schedule will be refined as the design is developed.

Detailed Project Schedule can be found in Exhibit B.

## 2.4 **Estimated Budget**

- The budget for design-build contract for the project is approximately \$14,500,000.
- The total budget for the project (soft costs, design-build contract and FF&E) is approximately \$21,650,000.

## 2.5 **Project Procurement Schedule**

2.5.1 The following is the Project Procurement Schedule. The Owner reserves the right to modify the Project Procurement Schedule. If three responses are received from qualified design-builders, the City may proceed with evaluating and ranking the proposals. If three responses are not received from qualified design-builders by the deadline shown below, the City will re-advertise the RFQ and establish a second deadline to submit a SOQ. A timeline for each of these scenarios is provided in the following table.

<b>DATE/TIME:</b>	<b>ACTIVITY:</b>
May 16, 2024	Issuance of RFQ
May 30, 2024 at 1:00 pm	Pre-Proposal Conference
June 6, 2024 at 3:00 pm	Deadline for Questions
June 20, 2024 at 2:00 pm	Deadline to Submit SOQs
June 21 – July 11, 2024	Evaluation Meeting and notification of shortlist
July 18, 2024	Interviews
July 22, 2024	Notice of selection (anticipated)

2.5.2 A Non-Mandatory Pre-Proposal Conference will be conducted as shown on the schedule above. Attendance is strongly encouraged. The meeting will be held in-person. The meeting information is provided below.

In-Person Meeting Location:

Charlotte-Mecklenburg Government Center (CMGC), Room # CH-14 at Basement Level.  
600 East 4th Street, Charlotte, NC 28202

**Attendance at the Pre-Proposal Conference is not mandatory but is highly recommended.**

## 2.6 **Definitions**

**2.6.1 Addendum or Addenda:** Documentation provided by the Owner to modify, add to or clarify the RFQ.

**2.6.2 Design-Builder:** The entity with the prime design-build contract with the Owner.

**2.6.3 Design-Build Team:** All entities listed by the Design-Builder as providing services or construction on the Project. The Design-Builder is not required to list all members of the Design-Build Team in the SOQ. Members of the Design-Build Team may also be referred to as "Team Members."

**2.6.4 Key Team Member:** Individuals who will be assigned to the Project who play an important role in the design, construction, or management of the Project. At a minimum these would include: **Project Director, Project Manager, Design Manager, Lead Process Engineer, Preconstruction Services Manager, Construction Manager, Site Superintendent and Safety Manager.**

**2.6.5 Owner's Advisor:** For the Project, the Owner's Advisor is Jones Lang LaSalle Americas, Inc (JLL), who will be providing management expertise and procurement services to facilitate the selection of the Design-Builder by the City and evaluation of information and documentation generated by the

Design-Builder during the course of the Project.

**2.6.6 Procurement:** The Owner's process for selecting a Design-Build Team for this Project.

**2.6.7 Procurement Documents:** All documents issued by the Owner in connection with the Procurement or Project.

**2.6.8 Projects of Similar Scope and Complexity:** Projects that had completion dates within 10 years of the RFQ Issue Date or are at least 80% complete at the time of SOQ submission based on dollar value of work completed and that have many or all of the characteristics described below. **(Note: These are not minimum criteria but considered the ideal experience level by which all project experience submitted will be evaluated against.)**

Additional desirable reference project features:

- a. Projects that demonstrated a commitment to sustainability and carbon footprint minimization design features and includes mass timber structural system.
- b. Projects that utilize a collaborative delivery method that require strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design.
- c. Projects where the Design-Builder was selected based on qualifications and where the Design-Builder collaborated with the Owner and Owner's Advisor to develop the final price and schedule.
- d. Projects where the Design-Builder was selected based on a strong recruitment and utilization of MWSBE/DBEs.

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

### **SECTION 3: PROCUREMENT PROCESS**

#### **3.1 General Information**

##### **3.1.1 Compliance with Legal Requirements**

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

##### **3.1.2 Addenda / Questions and Answers**

Any requests for additional information or clarifications should be submitted through the **Vendor Discussion** section on the Procurement Portal or via email at [sadia.khan@charlottenc.gov](mailto:sadia.khan@charlottenc.gov) by the "Deadline for Questions" stated in **Section 2.5 – Project Procurement Schedule**. Questions received after the stated deadline in the Procurement Project Schedule will not be answered. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the RFQ, and changes to the RFQ, if any, shall be made in writing only and issued in the form of an Addendum to the RFQ. Addenda will be posted at [Procurement Portal](#).

#### **3.2 Owner Rights and Procurement Conditions**

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

- a. To cancel, withdraw, postpone, or extend the Procurement process, in whole or in part without incurring any obligations or liabilities and reject any, or all, SOQs;

- b. To waive any informality, technicality or irregularity;
- c. To revise the Procurement Documents and Schedule via an addendum;
- d. To reject any Respondent that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
- e. To reject any or all responses to the RFQ, to advertise for new RFQ responses, or to accept any RFQ response deemed to be in the best interest of the City;
- f. To require confirmation of information furnished by a Respondent, require additional information from a Respondent concerning its SOQ or Proposal and require additional evidence of qualifications to perform the work described in this RFQ;
- g. To provide clarifications or conduct discussions, at any time, with one or more Respondents;
- h. To contact references who are not listed in the Respondent's SOQs and investigate statements on the SOQs and/or qualification of the Respondent and any firms or individuals identified in the SOQ;
- i. To consider Alternative Technical Concepts and/or approaches identified by Respondents;
- j. To take any action affecting the RFQ process or the Project that is determined to be in the Owner's best interests; and
- k. Approve or disapprove of the use of particular Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Subconsultants, Subcontractors, or Key Team Members from those identified in the SOQ or Proposal. Such approval or disapproval shall not be unreasonably exercised.

A response to this RFQ should not be construed as a contract, nor indicate a commitment of any kind. No recommendations or conclusions from this RFQ process concerning any Respondent shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law or statutory law of North Carolina. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and a Respondent jointly execute a contract.

### **3.3 Outline of the Procurement Process**

#### **3.3.1 Request for Qualifications (RFQ).**

- a. This RFQ invites firms to submit SOQs describing in detail their technical, management, and financial qualifications to design, permit, construct, commission, and close out the Project.
- b. Respondents will submit their SOQ and other deliverables required pursuant to this Procurement at the time and in the manner set forth in this RFQ and any Addenda. The Owner will not consider SOQ or other deliverables that are submitted after the Time set forth in the RFQ. Respondents are solely responsible for making sure that the Owner receives the SOQ in a timely fashion. See Section 4 for detailed information on how to submit a proposal.
- c. The Owner will evaluate the information submitted by each Respondent pursuant to the evaluation system described below. Any Respondent who fails to meet the requirements set forth in this SOQ will be deemed non-responsive and will not be considered further by the Owner in this Procurement.
- d. All SOQs or submittals will be evaluated in accordance solely with the criteria established in the RFQ and any Addenda issued thereto. The evaluation criteria are listed herein, including the relative weight or importance given to each criterion.
- e. Design-Build individuals and individual Key Team Members will be used as a basis for selection. Any change to any submitted individuals or Key Team Member prior to the completion of the selection process must be submitted to the City Procurement Manager immediately. Such changes will result in re-evaluation and may result in a change to the evaluation and ranking of the Respondent.

### 3.3.2 Selection Process / Interviews

Pursuant to N.C.G.S. 143-64.31, the City is conducting a “qualifications-based” selection process without regard to fee.

The City will conduct a fair and impartial evaluation of all proposals that are received in accordance with the provisions of this RFQ. The City will appoint a selection committee to perform the evaluation. The City reserves the right to obtain clarification of any point in any SOQ or to obtain additional information. A Respondent who submits SOQs will be notified of the selection committee’s choice. Final approval of any selected Respondent is subject to the action of City Council or appropriate City officials.

Interviews with Respondents may be held at the option of the selection committee. The interview process may be used to clarify the information contained in the SOQ, but not to modify the SOQ.

### 3.3.3 Communication Guidelines

With the exception of communications with the Owner’s contact for this RFQ, all Respondents and/or its agents are prohibited from communicating with elected City officials and City employees regarding the RFQ or proposals from the time the RFQ has been released until all Respondents have been notified and the selection results have been publicly announced. These restrictions extend to “thank you” letters, phone calls, and emails and any contact that results in the direct or indirect discussion of the RFQ and/or the SOQ submitted by the Respondent. Violation of this provision by the Respondent and/or its agents may lead to disqualification of the Respondent’s proposal from consideration.

### 3.3.4 No Lobbying

By responding to this request for qualifications, the Respondent certifies that it has not and will not pay any person or organization to influence or attempt to influence an officer or employee of the City or the State of North Carolina in connection with obtaining a contract under this RFQ.

### 3.3.5 Evaluation and Ranking of Respondents

In the evaluation and ranking of Respondents, the Owner will consider only the information submitted in the SOQ with respect to the evaluation criteria set forth in the RFQ. The result of the evaluation will be a comparative ranking of Respondents.

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

Criteria		Weight
1	Respondent’s understanding of the project and approach, including innovation.	30%
2	The Respondent’s experience in providing similar services for Projects of Similar Scope and Complexity.	25%
3	Qualifications, availability and abilities of Key Team Members.	20%
4	CBI Participation Plan describing Respondent’s approach and past history with MWSBE inclusion for similar projects, as well as the proposed utilization of MWSBE’s proposed to perform a commercially useful function under the scope of this contract.	15%
5	Quality, completeness, and readability of SOQ package.	10%

If interviews are conducted with Respondents, the following evaluation criteria will be used to make a final selection:

Criteria		Weight
1	Respondent's interview, including responses to questions provided by the Owner and ability to demonstrate an understanding of the project	25%
2	Respondent's interview related to ability to use time effectively, provide responses to all the questions asked by the Owner, and the overall quality of the interview	5%
3	Respondent's understanding of the project and approach, including innovation, as demonstrated in the proposal	25%
4	The Respondent's experience in providing similar services for Projects of Similar Scope and Complexity	20%
5	Qualifications, availability and abilities of Key Team Members	15%
6	CBI Participation Plan describing Respondent's approach and past history with MWSBE inclusion for similar projects, as well as the proposed utilization of MWSBE's proposed to perform a commercially useful function under the scope of this contract	10%

**3.4 Failure to Comply with Instructions**

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

**3.5 Modification of Withdrawal of SOQs**

Respondents may change or withdraw their SOQs at any time prior to the due date and time by resubmitting the proposal on Bonfire Procurement Portal. No withdrawal of SOQ will be permitted after the due date and time.

**3.6 Negotiations and Modification of Contract Documents**

A sample contract is attached. The City reserves the right to conduct negotiations with the Respondent regarding any remaining issues provided that the general work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the RFQ. The City will make such modifications to the Contract Documents as it may determine, in the exercise of its sole discretion, to be necessary to fully incorporate the terms of the Respondent's SOQ, or to correct any inconsistencies, ambiguities, or errors that may exist in the Contract Documents. If, in the City's sole discretion, it determines that the highest qualified Respondent is not responsive to the negotiation process, or that the parties will be unable to reach a timely and mutually-acceptable Contract, the City may terminate negotiations with the Respondent. The City will then continue the process of negotiation with the next highest qualified Respondent until the City either successfully negotiates a Contract or cancels the procurement.

### 3.7 **Public Records**

Upon receipt by the City, each SOQ becomes the property of the City and is considered a public record except for material that qualifies as “Trade Secret” information under North Carolina General Statute 66-152 et seq. SOQs will be reviewed by the City’s Selection Committee, as well as other City staff and members of the general public who submit public record requests after a selection result has been announced to the public. To properly designate material as a trade secret under these circumstances, each Respondent must take the following precautions: (a) any trade secrets submitted by the firm must specifically and clearly be identified by separating them from the rest of the Proposal and marked as “Trade Secret – Confidential and Proprietary Information – Do Not Disclose Except for the Purpose of Evaluating this SOQ” on each page of the trade secret and and (b) the document(s) containing the trade secret designations must be uploaded separately in the Procurement Portal.

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

### 3.8 **Reference Links –(Include link to plans <https://charlottenc.bonfirehub.com/opportunities/138380>)**

There are civil infrastructure reference links for the Project available to Respondents since this project will require some civil infrastructure improvements:

1. Plat Survey
2. Preliminary Site Plan
3. Presentation Site Plan
4. Preliminary Conceptual Floor Plan
5. Building Programming Document
6. Geotechnical Report
7. Phase I Environmental Report
8. City of Charlotte’ Energy & Sustainability Policy

## **SECTION 4: SOQ DOCUMENTATION REQUIREMENTS**

### 4.1 **Submittal Requirements**

To be considered for providing the required services to the City, submit the SOQ electronically through the [Procurement Portal](#) in searchable PDF format.

- 4.1.1 It is the sole responsibility of the firm to ensure that the SOQ package is uploaded and submitted to the Procurement Portal no later than the established due date and time. SOQs received after the due date and time will not be considered. SOQs submitted by any other means will not be accepted.

### 4.2 **SOQ Format Requirements**

The SOQs shall comply with the following format requirements:

- 4.2.1 SOQs shall be formatted in searchable PDF format.
- 4.2.2 The body of the SOQ shall be organized and page limited in accordance with Section 4.3.
- a. The font shall be no smaller than 11 points for narrative sections, but may be reduced for captions, footnotes, etc. as required while still maintaining legibility.

- b. Pages shall be numbered. Required forms, resumes, covers, sub-tabs and dividers do not count toward the page limit.
- c. SOQs that exceed the page limit may be rejected. The Owner, at its sole discretion, reserves the right to remove pages from the sections of any non-conforming SOQ submittals to bring each non-conforming SOQ submittal within the page count requirement.

#### 4.3 **SOQ Organization**

SOQs shall consist of the following parts, all tabbed:

**4.3.1 Cover letter:** To be signed by a person authorized to execute contracts on behalf of the respondent.

*Page limit: 5 page maximum (including three letters from surety and insurance company)*

- a. Describe your interest in this Project and the unique advantage your firm and team brings.
- b. Provide a letter from a surety company confirming the Firm's ability to provide bonding for the estimated amount for the Project.
- c. Provide a letter on the letterhead of the firm's insurance company stating the Worker's Compensation Experience Modification Rate (EMR) for the past three years.
- d. Provide a letter from an insurance company confirming the Firm's ability to obtain a Builder's Risk insurance policy for the Project.
- e. Describe any claims, disputes, and/or litigation, currently in process or resolved/settled within the past five (5) years, with the City or with any developer. State the type of project delivery method for each project that resulted in a claim.
- f. State if all design and construction companies included as part of the proposed team are registered with the NC Secretary of State to legally working in the State of North Carolina. Provide the legal name of each company included in the RFQ and their NC registration number.
- g. State if the Design Builder has a North Carolina General Contractors License. Provide the legal name of the entity and the GC license number.
- h. Provide a description of the company that will enter into the contract(s) with the City, including origin, background, current size, financial capacity, available resources, general organization, and company headquarters. Identify the name and title of the person authorized to enter to the contract(s) with the City. Include a list of proposed subcontractor(s), with legal names and contact information, and describe their responsibilities.
- i. List exceptions to the City's standard contract terms and conditions. A sample contract is incorporated as Exhibit D.

#### **4.3.2 Tab 1 - Proposed Project Personnel**

*Page limit: 12 pages maximum (excluding resumes)*

- Photos of Project Personnel should not be included in the SOQ, resumes included.
- Provide an overall organizational chart for the Respondent. Include all Key Team Members and supporting team members as well as subconsultants/subcontractors. Chart should designate team member's employer and which subconsultants/subcontractors are City of Charlotte MWSBEs.

- a. Respondent must provide an explanation of the project team will be assembled. In accordance with N.C.G.S. 143-128.1A, provide either of the following:
  - o A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the Design-Builder proposes to use for the Project's design and construction.
  - o An outline of the strategy the Design-Builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes.
- b. Respondent must provide an explanation of how the selection of the design professional(s). Per N.C.G.S. 143-128.1A, the design-build team shall certify that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by N.C.G.S. 143-64.31.
- c. Respondent should describe the benefits of the team organization to the execution of the Project.
- d. Respondent must provide two resumes for each of the key positions listed below. Respondent shall indicate which candidate the Respondent believes is the best (primary) person and which candidate is the backup.
  - o Project Director – individual most responsible for the successful delivery of the Project.
  - o Project Manager – individual responsible for the overall delivery of the Project including planning, design, construction, and commissioning and would serve as the primary owner contact.
  - o Design Manager – individual responsible for managing the activities and team resources to deliver the planning, permitting and design of the Project through completion.
  - o Preconstruction Services Manager – Individual responsible for constructability reviews, permits needed during construction, cost estimating, procurement, GMP development, and other tasks as needed for the transition between design and construction phases.
  - o Construction Manager – individual responsible for the delivery of the construction phase of the project. They would be responsible for providing constructability reviews during design and managing the team resources to deliver the construction phase of the Project.
  - o Site Superintendent – individual assigned to the project full time in the field to manage all construction activities and team field staff on the Project site.
  - o Safety Manager - individual with appropriate training and experience in safety requirements and methodologies who will be assigned to the project to provide guidance and oversight to the team in the field. Individual should not be a corporate position that will not be engaged with the Project.
- Each resume for the key positions will include the following information in the order described:
  - o Name and qualifications relative to general experience and qualifications (can be narrative statement), education, total years of experience, years with current company, and registrations/certifications (note whether these are North Carolina and if NC no need to list other states)
  - o Names and addresses of previous employers for past 10years

- Provide a summary of at least three Projects of Similar Scope and Complexity performed by the candidate within the last 10 years. The summary shall include:
  - Project Name
  - Brief Description of Project Scope
  - Constructed Value
  - Project Duration and Completion Date
  - Candidate's Position, Place of Employment and Duties within the Project
  - Owner Point of Contact, Email Address and Phone Number
- The following commitment is required of all key team members by including the following statement in the bottom margin of the resumes:

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

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

#### **4.3.3 Tab 2 - Respondent Experience (Design-Build, Design, and Construction)**

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

- a. Provide a maximum of 7 total projects highlighting Respondent's team experience with collaborative delivery (preference may be given for progressive design-build), design, and construction of Projects of Similar Scope and Complexity.
- b. Design-Build projects are preferred and count for both design and construction if Respondent's team members are the same as those who delivered the work. Project Experience sheets should be formatted as follows:
  - Section A – General Information
    - Name of project
    - Owner name, title, phone number and email address (Contact name should be individual involved in the project management for the owner.)
    - Name of designer and constructor
  - Section B – Project Description
    - Project scope
    - Project budget and describe compensation structure for project and if completed above or below bid or GMP
    - Key elements or challenges of the project similar to this project
    - Project schedule (including initial contract time, actual time to complete, and the completion date). Include the reason for any project time extensions.
    - Penalties assessed by the owner including but not limited to claims or liquidated damages

- Claims on the project, including any made against the Owner
- Section C – Team Members
  - Key Team Members for this project that worked on the team experience project and their position/role on the team experience project.
- Section D – Innovative Solution to a Challenge
  - Describe at least one project challenge and how it was managed.
- c. Include a single matrix chart illustrating the relationship/connection of proposed team members for this project to the team experience projects included in this section.

#### **4.3.4 Tab 3 - Perception of the Work and Approach**

*Page limit: 10 pages maximum*

- a. The following information should be included at a minimum (responses do not need to follow the structure below but should address each item in the narrative). Responses may include references to projects described in Section 3 of the SOQ that demonstrate the breadth and depth of the Respondent's experience and expertise in developing and delivering a variety of police station design and construction projects.
  - Comments on the Project scope versus budget as described in this RFQ and perceived needs of the Project.
  - Methodology and approach to the design, permitting, and construction services, including innovative or creative alternatives that could be proposed to add value or cost savings opportunities.
  - Methodology and approach to working with the City and Owner's advisor in developing the project scope with a discussion of scoping workshops for process, layout, equipment, and cost estimating.
  - Potential risks and mitigation for all phases of the Projects.
  - Describe how Respondent will ensure sufficient bidders of all work packages, including addressing how much of the construction work will be subcontracted and self-performed.
  - Describe how Respondent will address craft labor shortage and ensure sufficient resources to accomplish schedule.
  - Describe Respondent's process to develop GMP.

#### **4.3.5 Tab 4 – Project List**

*Page limit: 1 page*

Submit a list of all projects presently under construction by the Design-Builder including dollar value of the contract for each project and the percent of completion based on dollar value of work completed at the time of SOQ submission.

#### **4.3.6 Tab 5 – Charlotte Business INclusion Minority, Women, and Small Business (MWSBE) Inclusion Strategy**

*Page limit: 1 page*

- a. Please detail MWSBE participation on past, similar projects, including a brief description, established goal, total goal achieved and total number of MWSBE firms utilized;
- b. Describe how your firm plans to comply with the Charlotte Business INclusion (CBI) Program;

- c. Identify outreach efforts that will be employed by the Proposer to maximize inclusion; identify outreach efforts that have already been conducted in connection with this RFQ. A sample outreach plan and criteria are attached with this RFQ under Exhibit C;
- d. Please identify MWSBE firms that will be utilized during the Pre-Construction Phase Services;
- e. Please identify specific scopes of work to be performed by MWSBE firms during Pre-Construction Phase;
- f. Document efforts your firm will utilize to ensure maximum utilization for Construction Phase Services; and
- g. Provide Form 5 – Subcontractor / Supplier Utilization Commitment detailing the MWSBE firms your firm intend to utilize during the pre-construction phase.

For more information on Charlotte Business INClusion please refer to Section 5 of this RFQ.

#### **4.3.7 Tab 6 – Forms**

*Page limit: Submit forms as provided.*

- a. Form 1: Respondent Information
- b. Form 2: Basic Requirements
- c. Form 3: General Background of Designer
- d. Form 4: General Background of Builder
- e. Form 5: Charlotte MWSBE Participation Plan
- f. Form 6: Affidavits
- g. Form 7: Commercial Non-Discrimination Certification
- h. Form 8: Certification Regarding Debarment, Suspension and Other Responsibility Matters
- i. Form 9: Byrd Anti-Lobbying Certification

## **SECTION 5: ADDITIONAL INFORMATION ABOUT THIS RFQ**

### **5.1 Charlotte Business INclusion Program**

Pursuant to Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program seeks to enhance competition and participation of Minority-owned, Women-owned, and Small Business Enterprises (MWSBEs) in City contracting. To accomplish this, the City has examined its procurements and set specific MWSBE participation goals on a contract-by-contract basis. In addition, CBI makes a concerted effort to expand its certified MWSBE vendor pool and assist city-certified firms in growing, enhancing, and developing their businesses. CBI currently offers numerous development programs that support certified businesses in organizational training, strategic development, and networking opportunities.

The CBI Policy and CBI Manual are posted online here: [www.charlottebusinessinclusion.com](http://www.charlottebusinessinclusion.com)

To determine whether disparities exist in City contracting based on race, gender or other factors, and also to measure the effectiveness of the City's Charlotte Business INclusion ("CBI") Program, the City tracks the utilization of subconsultants and suppliers on certain City contracts based on race, gender, small business status, and other factors. For analysis purposes, it is important that the City obtain this data not only for minority-owned, women-owned, and small business suppliers and subconsultants, but also for other subconsultants and suppliers. As a condition for receiving payments under this Contract, the Proposer agrees to submit any payment record into InclusionCLT, or any subsequent system designated by the City, detailing the amounts paid by the Consultant to all subconsultants and suppliers receiving payment in connection with this Contract.

Respondents are put on notice that the MWSBE Subcontracting Goal for the Project will be determined based on scopes of work that the Respondent has identified as subcontracting opportunities which includes all development, planning, design, consulting, pre-construction, and construction work, and for any other work, services, and products provided on the Project(s).

**An M/W/SBE goal will be negotiated with the selected firm for the Phase 1 of this project. Phase 1 will include all development, planning, design, consulting and pre-construction work.**

**An MBE and W/SBE goal will be established for Phase 2 of this project. Phase 2 will include all construction work and the goals are typically set when Design Development documents are complete (before Construction phase).**

The City would like the Company to submit the firms it intends to utilize to meet this goal. Therefore, the Company is required to submit the Form 5 – Subcontractor / Supplier Utilization Commitment attached herein. Failure to submit this form with the Proposal shall render the Proposal non-responsive.

In addition to the MWSBE participation plan, we recommend the firm provide a mentoring plan for the MWSBE during the life of the project. The firm would provide documentation on a quarterly basis during the project on the progress of the mentor/protégé partnership.

City certified MWSBE firms can be found in the City's InclusionCLT system:

<https://charlotte.diversitycompliance.com/>

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

The documentation required in this section shall be submitted with the firm's Proposal (collectively "Minority, Women & Small Business (MWSBE) Inclusion Strategy").

## 5.2 **Vendor Registration**

The selected firm, their subcontractors and and suppliers must be registered in the City's Vendor Registration System in order to receive payment for services and/or supplies provided under any City contract.

## 5.3 **Commercial Non-Discrimination Ordinance**

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

As a condition of entering into this agreement, the Company represents and warrants that it will fully comply with the City's commercial non-discrimination policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of a Protected Class in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

As a condition of entering into this agreement, the Company agrees to:

a) Promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this agreement; and

(b) If requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that company has used on City contracts in the past five years, including the total dollar amount paid by contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's commercial non-discrimination policy as set forth in Section 2, Article V of the Charlotte City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

The Company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts or other sanctions.

For purposes of this section, "Protected Class" means a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability, as those terms are further defined in Section 2, Article V of the Charlotte City Code.

## 5.4 **E-Verify**

The following provision will be incorporated into any contract that may result from this solicitation:

The firm shall comply with requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

## 5.5 **Applicable Laws**

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

## **5.6 Cost of SOQ Preparation**

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

## **5.7 Registration with Secretary of State for North Carolina**

Any firm wishing to be considered for the Services must be properly registered with the Office of the Secretary of State at the time of submission of the SOQ. Any Respondent selected under this RFQ will be responsible for providing all professional, technical, managerial, and administrative staff with the appropriate skills and qualifications to perform the required Project.

## **5.8 NC Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel**

By submitting an SOQ, Respondent certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List before or during the term of this RFQ. In submitting a proposal in response to this RFQ, Respondent further agrees, as an independent obligation, separate and apart from this RFQ, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that Respondent's proposal or any part thereof is void due to Respondent appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the RFQ.

## **5.9 Financial Capacity: Insurance Requirements**

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

- a. Professional liability insurance coverage in the minimum amount of \$3,000,000;
- b. Automobile liability in the minimum amount of \$2,000,000;
- c. Commercial general liability in the minimum amount of \$10,000,000; including riggers liability in the amount adequate to cover property in the care custody and control of the crane operator.
- d. Pollution Liability coverage of not less than \$1,000,000 per occurrence and in aggregate.
- e. Workers' compensation insurance as required by North Carolina statutes.
- f. Builder's Risk coverage for the value of the project.
- g. Railroad Protective Liability if required during construction if in railroad right-of-way.

## **5.10 Duties and Obligations of Firms in the RFQ Process**

Interested firms are expected to fully inform themselves as to all conditions, requirements and specifications of this RFQ before submitting a proposal. Firms must perform their own evaluation and due diligence verification of all information and data provided by the City. The City makes no representations or warranties regarding any information or data provided by the City. Firms are expected to promptly notify the City in writing to report any ambiguity, inconsistency or error in this RFQ. Failure to notify the City accordingly will constitute a waiver of claim of ambiguity, inconsistency or error.

### **5.11 Advertising**

In submitting a SOQ, the firm agrees not to use the results therefrom as part of any commercial advertising without prior written approval of the City of Charlotte.

### **5.12 Ownership of Work Products**

The City shall have exclusive ownership of all intellectual property rights in all designs, plans and specifications, documents and other work product prepared by, for, or under the direction of the selected firm pursuant to any contract under this RFQ (collectively, the "Intellectual Property"), including without limitation the right to copy, use, disclose, distribute, and make derivations of the Intellectual Property for any purpose or to assign such rights to any third party. The Intellectual Property shall be prepared in the City's name and shall be the sole and exclusive property of the City, whether or not the work contemplated therein is performed. The City will grant the firm a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform the contract.

### **5.13 Equal Opportunity**

The firm will ensure that employees and applicants for employment are not unfairly discriminated against because of their race, color, religion, sex, national origin, disability or veteran status.

**SECTION 6: LIST OF ATTACHMENTS AND AVAILABLE REFERENCE DOCUMENTS**

**REQUIRED FORMS**

FORM 1 - RESPONDENT INFORMATION

FORM 2 - BASIC REQUIREMENTS

FORM 3 - GENERAL BACKGROUND OF DESIGNER

FORM 4 - GENERAL BACKGROUND OF BUILDER

FORM 5 - CHARLOTTE MWSBE PARTICIPATION PLAN

FORM 6 - AFFIDAVITS

FORM 6A - AFFIDAVIT FOR CORPORATION

FORM 6B - AFFIDAVIT FOR LIMITED LIABILITY COMPANY

FORM 6C - AFFIDAVIT FOR PARTNERSHIPS

FORM 6D - AFFIDAVIT FOR JOINT VENTURE

FORM 7 - COMMERCIAL NON-DISCRIMINATION CERTIFICATION

FORM 8 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

FORM 9 - BYRD ANTI-LOBBYING CERTIFICATION

**EXHIBITS**

EXHIBIT A – DETAILED SCOPE OF WORK

EXHIBIT B – DETAILED PROJECT SCHEDULE

EXHIBIT C – SAMPLE MWSBEOUTREACH PLAN

EXHIBIT D - SAMPLE CONTRACT

**PLANS & REPORTS**

**(available via the Link outlined in section 3.8 of this RFQ)**

Plat Survey of Property

Preliminary Site Plan

Presentation Site Plan

Preliminary Conceptual Floor Plan

Building Programming Document

Geotechnical Report

Phase 1 Environmental

City of Charlotte Energy & Sustainability Policy

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 269-2024-114)**

**FORM 1 RESPONDENT INFORMATION**

Project: CFD River District Firehouse 44 Phase II

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

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

Proposer: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**PROPOSER INFORMATION**

City of Charlotte Vendor  
Number:

\_\_\_\_\_

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

Contact 1 Name:

Contact 1 Email:

Phone:

Contact 2 Name:

Contact 2 Email:

Phone:

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

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

**Does the Proposer or any key individual:**

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

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

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

Yes  No

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

Yes  No

**Does the Proposer acknowledge that:**

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

Yes  No

**Proposal contains confidential / proprietary / trade secret information:**

Yes  No (If yes, pages must be clearly identified as described in Section 3.7)

**Acknowledgement of Addenda:**

No.: \_\_\_\_\_ Date: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_

Respondent shall use the appropriate and applicable Form 6 AFFIDAVIT.

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 269-2024-114)**

**FORM 2  
BASIC REQUIREMENTS**

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The following requirements will be reviewed and weighted heavily during selection. City may not select an Offeror who fails to meet the below requirements.

A. Provide a notarized letter(s) addressed to the City and referencing this RFQ from the Offeror's surety company(ies) which verifies the Offeror's total bonding capacity and states that the surety company(ies) intend(s) to issue standard payment and performance bonds on behalf of the Offeror if a contract(s) to construct the Project(s) is awarded. An Offeror must have sufficient remaining bonding capacity from an acceptable surety to satisfactorily bond the work. An acceptable surety shall be one with at least an A.M. Best Rating of A- or higher and must be included in the Department of the Treasury's Listing of Certified Companies (the list can be found at the following web address: [https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570\\_a-z.htm](https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm))

B. Provide payment and performance bonding/surety company information as follows:

- Name: \_\_\_\_\_
- Address: \_\_\_\_\_
- Point of Contact: \_\_\_\_\_
- Surety A.M. Best Rating: \_\_\_\_\_

C. Provide documentation verifying that Offeror possesses a valid North Carolina General Contractor's license (Unlimited) and be registered with the North Carolina Secretary of State to legally work in the State of North Carolina. This is a requirement of being considered further for this RFQ.

- North Carolina General Contractor's License number \_\_\_\_\_
- North Carolina SOS ID number \_\_\_\_\_

D. Provide documentation verifying that the Design Builders Architect of Record possesses a valid North Carolina Board of Architecture License and be registered with the North Carolina Secretary of State to legally work in the State of North Carolina . This is a requirement of being considered further for this RFQ.

- North Carolina Board of Architecture License number \_\_\_\_\_
- North Carolina SOS ID number \_\_\_\_\_

E. Provide documentation verifying that the Design Builders Engineering Consultants possesses a valid North Carolina Board of Examiners for Engineers and Surveyors and be registered with the North Carolina Secretary of State to legally work in the State of North Carolina . This is a requirement of being considered further for this RFQ.

North Carolina Board of License number.

- Civil Engineer – \_\_\_\_\_,
- Structural Engineer – \_\_\_\_\_
- Mechanical & Plumbing Engineer – \_\_\_\_\_
- Electrical – \_\_\_\_\_

North Carolina SOS ID number.

- Civil Engineer – \_\_\_\_\_,
- Structural Engineer – \_\_\_\_\_
- Mechanical & Plumbing Engineer – \_\_\_\_\_
- Electrical – \_\_\_\_\_

F. Has the Offeror or any of its Officers (including any experience and time while employed by another Company) been convicted of criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, or prevailing wages over the past 10 years?

\_\_\_\_\_ YES    \_\_\_\_\_ NO

G. Has the Offeror or any of its Officers (including any experience and time while employed by another Company), Parent, Affiliates, or Subsidiaries had a judgment entered for contract default or been barred from bidding on public contracts over the last 10 years?

\_\_\_\_\_ YES    \_\_\_\_\_ NO

H. Provide documentation verifying the Offeror’s acceptable safety record. An acceptable safety record is defined as attainment and maintenance of an Experience Modification Rate (EMR) of 1.0 or less for at least two of the last three years and no more than 1.2 any one year of the last three. Please note, Offerors with an unacceptable safety record may be disqualified as an Offeror for the Project.

- 2023-2024 EMR: \_\_\_\_\_ -
- 2022-2023 EMR: \_\_\_\_\_ -
- 2021-2022 EMR: \_\_\_\_\_ -

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#:269-2024-114)**

**FORM 3  
GENERAL BACKGROUND OF LEAD DESIGNER**

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If Designer is a Joint Venture, provide requested information for all entities of the Joint Venture as an attachment to this Form.

A. Designer Name: \_\_\_\_\_

B. Current Name, address, and contact information:

1. Full Name of Designer: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Location Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Principal Office Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Local Office Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

2. Designer is: \_\_\_\_\_ Sole Proprietor      \_\_\_\_\_ Corporation  
                              \_\_\_\_\_ Partnership      \_\_\_\_\_ Limited Liability Company  
                              \_\_\_\_\_ Joint Venture

C. Has Designer operated under the current name for the last 10 years? \_\_\_YES\_\_\_NO

If No, attach to this Form a complete explanation for operating under a different name. List below each previous name or address, if any used in the last 10 years. Use attachments to this Form as needed.

1. Previous Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Location Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

2. Company was: \_\_\_\_\_ Sole Proprietor          \_\_\_\_\_ Corporation  
    \_\_\_\_\_ Partnership          \_\_\_\_\_ Limited Liability Company

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

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

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

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

1. Previous Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Location Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

2. Company was: \_\_\_\_\_ Sole Proprietor          \_\_\_\_\_ Corporation  
    \_\_\_\_\_ Partnership          \_\_\_\_\_ Limited Liability Company

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, list bankruptcies below; add lines as needed)

1. \_\_\_\_\_
2. \_\_\_\_\_

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, list defaulted loans below, including amounts; add lines as needed)

1. \_\_\_\_\_
2. \_\_\_\_\_

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

\_\_\_\_\_ YES \_\_\_\_\_ NO

I. Designer's/Builder's Safety Submission Requirements:

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

\_\_\_\_\_

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, provide as an attachment to this Form an outline of quality control/quality assurance program. Selected Design-Builder should be able to provide a copy upon award.)

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, provide as an attachment to this Form an outline of the substance abuse policy. Selected Design-Builder should be able to provide a copy upon award.)

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, provide details regarding lawsuits below; add lines as needed)

1. \_\_\_\_\_
2. \_\_\_\_\_

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 2024-114)**

**FORM 4  
GENERAL BACKGROUND OF LEAD BUILDER**

---

If Builder is a Joint Venture, provide requested information for all entities of the Joint Venture as an attachment to this Form.

A. Builder Name: \_\_\_\_\_

B. Current Name, address, and contact information:

1. Full Name of Builder: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Location Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Principal Office Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Local Office Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

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

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

If No, attach to this Form a complete explanation for operating under a different name. List below each previous name or address, if any used in the last 10 years. Use attachments as needed.

1. Previous Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Location Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

2. Company was: \_\_\_\_\_ Sole Proprietor          \_\_\_\_\_ Corporation  
   \_\_\_\_\_ Partnership          \_\_\_\_\_ Limited Liability Company

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

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

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

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

1. Previous Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Location Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

2. Company was: \_\_\_\_\_ Sole Proprietor          \_\_\_\_\_ Corporation  
   \_\_\_\_\_ Partnership          \_\_\_\_\_ Limited Liability Company

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, list bankruptcies below; add lines as needed)

1. \_\_\_\_\_
2. \_\_\_\_\_

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, list defaulted loans below, including amounts; add lines as needed)

1. \_\_\_\_\_
2. \_\_\_\_\_

H. Bonding:

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

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

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

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

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

\_\_\_\_\_ YES \_\_\_\_\_ NO

J. Builder's Safety Submission Requirements:

1. Attach to this Form an outline of Builder's written safety program.

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

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, attach to this Form an outline of construction quality control/quality assurance program. Selected Design-Builder should be able to provide a copy upon award.)

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

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, attach to this Form an outline of the substance abuse policy. Selected Design-Builder should be able to provide a copy upon award.)

M. Has the Builder, its Parent, or any of its Subsidiaries been involved in any construction-related lawsuit

(other than labor or personal injury litigation) in the last 10 years?

\_\_\_\_\_ YES \_\_\_\_\_ NO (If YES, provide details regarding lawsuits below; add lines as needed)

1. \_\_\_\_\_
2. \_\_\_\_\_

**Request for Qualifications for  
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**FORM 5  
SUBCONTRACTOR/SUPPLIER UTILIZATION COMMITMENT**

This form **MUST** be submitted at the time of Bid Opening. *Copy this CBI Form 3 as needed.*  
Failure to properly complete and submit Form 3 with the Bid constitutes grounds for rejection of the Bid.

Per Section 3.5 of the CBI Administrative Procedures Manual, the Subcontractor/Supplier Utilization Commitment (**CBI Form 3**), captures information regarding the MWSBEs and other subcontractors and suppliers that the Bidder intends to use on the Contract **FOR ALL TIERS.**

M/W/SBEs must satisfy the requirements of Section 2 of the CBI Administrative Procedures Manual in order to count the work they intend to perform on the contract with its own current workforces towards the Contract Goal, and must list themselves below.

<b>Bidder Name:</b>			
<b>Project Name:</b>	CFD River District Firehouse 44 Phase II		
<b>MWBE Goal:</b>		<b>MBE Goal:</b>	
<b>MSBE Goal:</b>		<b>WBE Goal:</b>	
<b>MWSBE Goal:</b>	Negotiated	<b>SBE Goal:</b>	

List below all **M/W/SBEs** that you intend to use on this Contract. **NOTE: You will only receive credit for M/W/SBEs that are currently certified with the City as of the Bid Opening Date.**

M/W/SBE Vendor Name	Description of work / materials	NIGP Code

List below all **non-M/W/SBEs (subcontractors and suppliers)** that you intend to use on this Contract

Vendor Name	Description of work / materials	NIGP Commodity Code

**Letters of Intent submitted upon notice from the City**

Per Section 3.5 of the CBI Administrative Procedures Manual, within three (3) Business Days after receiving a request from the City (or within such longer time as may be communicated by the City in writing), Bidders must submit a separate Letter of Intent (**CBI Form 4**) for each M/W/SBE listed on **CBI Form 3**. Each Letter of Intent must be executed by both the M/W/SBE and the Bidder. The City shall not count proposed M/W/SBE utilization for which it has not received a Letter of Intent by this deadline. The Bidder is still obligated to pay the M/W/SBE the full amount listed on the Contract with the M/W/SBE regardless of what percentage is actually counted towards the M/W/SBE Goal.

**Adding subcontractors or suppliers after submitting this form**

Nothing in this certification shall be deemed to preclude you from entering into subcontracting arrangements after submission of this form. However, per the CBI Administrative Procedures Manual, you must comply with the following:

- You must maintain the level of M/W/SBE participation stated in the Contract throughout the duration of the Contract, except as specifically allowed in Section 5
- If you need to terminate or replace a M/W/SBE, you must comply with Section 5.3
- If the scope of work on the Contract increases, or if you elect to subcontract any portion of work not identified on this form as being subcontracted, then you must comply with Section 5.4
- A Letter of Intent (**CBI Form 4**) must also be submitted for each M/W/SBE you add subsequent to contract award.

**All Subcontractors and Suppliers must be registered with the City of Charlotte.**

Pursuant to the City’s Vendor Registration Policy, each subcontractor or supplier (non-MBE/SBE, WBEs, SBEs and MBEs) that you use on this contract must be registered in the City’s vendor database.

**Signature**

Your signature below indicates that the undersigned firm certifies and agrees that:

- (a) It has complied with all provisions of the CBI Policy and Administrative Procedures Manual; and,
- (b) Failure to properly document such compliance in the manner and within the time periods established by the CBI Policy and Administrative Procedures Manual shall constitute grounds for rejection of your bid.

\_\_\_\_\_  
Signature of Authorized  
Official

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Submittal Date

Version 06-2023

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 269-2024-114)  
FORM 6 AFFIDAVITS**

---

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

**Request for Qualifications for  
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(RFQ#: 269-2024-114)**

**FORM 6**

**AFFIDAVIT FOR CORPORATION**

---

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says:

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Officer must sign here.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 269-2024-114)**

**FORM 6**

**AFFIDAVIT FOR LIMITED LIABILITY COMPANY**

---

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says:

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Manager must sign here.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 269-2024-114)**

**FORM 6**

**AFFIDAVIT FOR PARTNERSHIP**

---

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says:

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
General Partner must sign here.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
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**FORM 6**

**AFFIDAVIT FOR JOINT VENTURE**

---

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says:

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Authorized Representative must sign here.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 269-2024-114)**

**FORM 7  
COMMERCIAL NON-DISCRIMINATION CERTIFICATION**

---

**Project Name:** CFD River District Firehouse 44 Phase II  
**Consultant's Name:** \_\_\_\_\_

The undersigned Bidder or Respondent hereby certifies and agrees that the following information is correct:

1. In preparing its enclosed bid or proposal, the Bidder or Respondent has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in Section 2 below.
2. For purposes of this form, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability, or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Statement of Qualifications (SOQ) submitted with this certification, and terminate any contract awarded based on such SOQ. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Bidder or Respondent to any remedies allowed thereunder, including possible disqualification from participating in City contracts or bid processes for up to two years.
4. As a condition of contracting with the City, the Bidder or Respondent agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of suppliers and subconsultants in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the proposal and to any contract awarded on such proposal. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance, and shall subject the Bidder or Respondent to any remedies that are allowed thereunder.
5. As part of its bid or SOQ, the Bidder or Respondent shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder or Respondent in a legal or administrative proceeding alleging that Bidder or Respondent discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. Respondent shall attach this list to the Form.
6. As a condition of submitting a bid or proposal to the City, the Bidder or Respondent agrees to comply with the City's Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted there under.

By: \_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

Title: \_\_\_\_\_

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#:269-2024-114)**

**FORM 8  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

Project: CFD River District Firehouse 44 Phase II

Company: \_\_\_\_\_

The Bidder, contractor, or subcontractor, Respondent as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Contract, or persons or entities holding greater than 10% equity interest in it (collectively "Principals"):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
2. Have within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.

**I hereby certify as stated above:**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse 44 Phase II  
(RFQ#: 269-2024-114)**

**FORM 9  
BYRD ANTI-LOBBYING CERTIFICATION**

---

Project: CFD River District Firehouse 44 Phase II

---

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

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

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
City / State / Zip

**Request for Qualifications for  
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**EXHIBIT A – DETAILED SCOPE OF SERVICES**

**Current Status:**

The City of Charlotte is in the process of the Phase I temporary firehouse being built on the property to support the components of the River District development that will be in place prior to the permanent firehouse (this project) being built and operational. See Site Plans included as links (as outlined in section 3.8 of this RFQ) indicating the location of the Phase I temporary firehouse site development and building as well as the location of the site set aside for the Phase II permanent firehouse site improvements and building. The staging & logistics of the Phase II permanent firehouse is to be organized so as to not impact the operations of the temporary firehouse.

At the completion of the temporary firehouse the following scope will be completed to serve the permanent firehouse:

- Overall site will be mass graded and stormwater pond will be completed.
- The building pad of the permanent firehouse will be prepared with the city’s geotechnical firm will provide a letter certifying the compaction of the building pad.
- The entire site will be seeded with stand of grass established
- Taps for water & sewer for the Phase II firehouse – not included
- Curb cuts from public street for the Phase II firehouse – not included

**The Design-Builder will be engaged in a two-phase process:**

Phase 1 – Programming & preliminary design taken far enough for the Design-Builder to establish a GMP and obtain a site development permit. The City of Charlotte will negotiate with the selected Design-Builder to refine the scope and establish the compensation for Phase 1. Should the Design-Builder not provide a scope and GMP contract amount acceptable to the city for Phase 2, the Design-Builder will only receive compensation for work completed within the Phase 1 contract amount.

Phase 2 – Once Phase 1 Scope is complete and if a GMP agreement for the Phase 2 scope is executed the Design-Builder will complete the Construction Documents, obtain the necessary permits for the building (vertical development) and construct the project.

**Summary of the scope of services by phase:**

<b>Discipline/Task</b>	<b>Phase 1</b>	<b>Phase 2</b>
Architecture	Finalize Existing Programming, SD & DD	Construction Documents and CA
LEED/Sustainability	Programming, SD & DD	Construction Documents and CA
Civil Engineering	SD, DD and Construction Documents	Construction Administration
Landscape Architecture & Irrigation		
Structural Engineering	SD & DD	Construction Administration
Mass Timber Design	Fabrication Ready Shop Drawings and Specifications	Construction Administration
MEP & Fire Protection Engineering	SD & DD	Construction Documents and CA
Pre-Construction	SD Budget and GMP Estimate	Finalize based on completed CD's
Permits	Site Development Permits	Building Permits
Construction	No Scope	Full Construction
Commissioning	No Scope	Complete during this phase
Close-Out	No Scope	Complete during this phase

## Scope of Services

The Design-Builder is responsible for completing the design and Construction Documents (Drawings & Specifications) for the following disciplines. The design scope is to include the design, engineering and Construction Documents for all of the scope indicated within the Project Criteria, as well as the scope outlined below.

- Civil – (although the site has been mass graded and a stormwater pond has already been constructed)
- Landscaping
- Architectural
- Structural Engineering
- Mechanical Engineering (HVAC, plumbing and vehicle fuel tanks)
- Fire Protection Engineering
- Electrical Engineering (including fire alarm)
- Communications Cabling – per CFD standards
- Security (CCTV and card access) – per CFD standards

## Design Refinement

The selected design firm is to have an initial set of meetings with the CFD and City of Charlotte to incorporate any additional modifications/refinements to the project scope. Modifications may include site revisions, building foot-print revisions, and relocation of various spaces/functions located within the facility.

In addition to the above, the design firm and each engineering discipline are to attend a weekly project meetings or conference calls to coordinate the preparation of the Construction Documents with JLL, the CFD, City (Owner), and Design-Builder.

## Field Verification

Site - The design team will be provided the construction drawings for the Phas I temporary firehouse (office trailer and pre-engineered building for the fire truck) and associated site improvements which is being competed as part of another project. At the beginning of the Phase II scope of this project, the Design-Builder is to engage a surveyor to prepare an updated as-built survey of all existing site improvements on the property, if one is not provided.

## Construction Documents

1. Civil Engineering
  - a. Erosion control plans indicating modifications as required to the existing site conditions to meet City of Charlotte requirements. Indicate earth disturbing activities and associated construction details to be completed within applicable City of Charlotte standards/requirements. Prepare all required calculations and reports.
  - b. Demolition plan – indicate existing conditions/improvements to be removed to accommodate the new site plan.
  - c. Site plan indicating – expansion to existing parking lots/drives, locations of new building(s), exterior fencing (including gates) and exterior site signage. Indicate location of all curb & gutter, asphalt paving (both light duty & heavy duty), concrete paving and any necessary offsite improvements (emergency signal and similar requirements).
  - d. Grading plan – indicate all modifications to existing topography to accommodate the new site work.

- e. Drainage plan – indicate the modifications to the existing storm water drainage system (if needed), as well as indicate the new storm drainage infrastructure (piping & structures). Indicate the size and material for all drainage piping and structures (including elevations of all inverts)
  - f. Utility plan – indicate the route, locations and sizes of all new and existing site utilities (water, sewer, electric, & telephone/communications) lighting (including all light pole locations).
  - g. Construction logistics plan - Prepare a site plan indicating how construction is to be segregated from the existing temporary Phase I firehouse, including the location of construction vehicle (egress & ingress), construction trailers, material staging areas and fencing. This plan also needs to clearly indicate the phasing of the project, while not interfering with the operations of the temporary firehouse. The use of temporary barricades and barrels are also to be included as needed to construct the parking lot additions and safely segregate the Fire Department’s employee parking from construction activities.
2. Landscaping design
- a. Indicate all new landscaping (trees, bushes, planting beds, sodded areas and seeded lawns) including modifications, removal or relocation of existing landscaping (trees, bushes, planting beds and lawns)
3. Architectural design
- a. Demolition plans – indicating all existing construction to be removed to accommodate the new work. Phase II Design-Builder to remove Phase I modular building and associated building infrastructure with the exception of the Phase I apparatus storage building.
  - b. Construction floor plans for the first and second levels (including all interior rooms such as fire truck bays, living areas, office space, kitchen, bathrooms, sleeping quarters and other support type spaces). Provide wall type designation for typical interior partition types.
  - c. Roof plans – including location of roof membrane, direction of roof slopes, roof drains, roof penetrations, access ladders and all roof mounted equipment.
  - d. Building elevations – elevations of all sides of the building(s) indicating all of the exterior building materials as well as the location of all doors and windows. Indicate location of all new wall mounted exterior signage.
  - e. Building sections – a north/south and east/west sections through the building indicating the overall configuration of the building and locations of key pieces of equipment
  - f. Wall sections – one wall section through each individual exterior condition. Indicate configuration and dimensional qualities of the floor slab, all exterior wall materials, ceilings, structure and roof assembly.
  - g. Interior elevations – provide interior elevations for all a kitchen, bathroom, showers, and spaces with millwork.
  - h. Door schedules – provide a door schedule which indicates the size, material and hardware associated with all typical interior and exterior doors. Provide an elevation of each door type as well as a hardware specification (including coordination with the card access system) required for each door type.
  - i. Finish selection – A designer is to assist City of Charlotte in making selections for all interior finishes and present 3 options – one suggested finish and 2 alternates (finishes to be similar to finishes of other existing facility) to the Fire Department Interiors Committee. Once CFD selects a particular option the designer is to refine that direction to obtain CFD’s final approval (a final finish board will be developed documenting the final direction). A finish schedule is to be prepared and included on the drawings indicating the location and specifications of all interior finishes for floors (carpet, tile, VCT, sealed concrete and polished concrete), base, walls, ceilings and doors.
4. Structural design
- a. Foundation design (including size and depth of all foundations)
  - b. Floor slab – Provide thickness of concrete slabs and thickened slabs to support vehicles, fuel tanks and any heavy equipment. Provide specifications for structural reinforcing, vapor barrier

- and the mix design specification associated with the concrete slab. Provide details on the integral color of the polished concrete throughout the structure.
- c. Mass Timber – Provide Mass Timber structural design drawings for structure as well as shop drawings necessary to fabricate the mass timber structure (with associated penetrations completed in the fabrication shop)
5. Fire Sprinkler design
    - a. Exterior fire protection piping & fire hydrants
    - b. Coordination with Insurance Carrier and Fire Marshal (local and state) – review preliminary design with the insurance carrier and fire marshal to verify the requirements of the fire protection system.
  6. Mechanical design
    - a. HVAC system – Configuration of AC units, exhaust fans, distribution ductwork, exhaust ductwork, diffusers and grilles for the production spaces and office spaces. Specify size and features associated with all of the above equipment & duct work.
    - b. IDF communications cabling rooms will require redundant AC units. Provide specification & sequence of controls for how the existing equipment is to tie into the BMS control system for the existing system.
    - c. Geothermal System – Configuration of system of wells, associated piping and equipment to provide heating, air-conditioning and domestic hot water.
  7. Plumbing design
    - a. Domestic water piping/fixtures, sanitary sewer drain lines and roof leaders associated with the office areas and the manufacturing plant.
    - b. Compressed Air system – Provide drawing to indicate new compressed air distribution system (compressors, receiver tanks, dryers), air piping loop with valves & taps in the new building.
  8. Fuel Station/Tank Design
    - a. Engineering associated with fuel tanks and associated distribution & controls
    - b. Tanks include both a 3,000 gal Diesel Tank and 2,000 gal Unleaded Tank
  9. Electrical design
    - a. Evaluate the existing utility service provided and consult with Duke Energy as to the proper service to accommodate the addition and its anticipated loads.
    - b. Provide a site utility plan indicating; utility service to the building (including appropriate gear and take-over point from the utility), communications cabling service conduits, service to exterior gates (electrical service and empty conduits) and exterior lighting (both building and pole mounted), electrical service to signs and miscellaneous exterior outlets.
    - c. Lighting plan – layout of interior lights and along with a luminaire schedule (providing the specification of the lights) indicate how all lighting is to be switched/controlled.
    - d. Electrical power plan – layout and configuration of the entire electrical distribution system from electrical main gear distribution.
    - e. Electrical riser diagram – a riser diagram to be provided to indicate the configuration of the entire electrical distribution system within the facility.
    - f. Outlet Plans – Indicate locations of electrical and receptacles throughout the facility.
    - g. Panel Schedules – provide panel schedules for all panels
    - h. Fire Alarm system – indicate how to extend the existing fire alarm system to provide code required notification within the addition to the existing building and specify a compatible system for the PESC building. Indicate the location of all required devices to meet code requirements.
    - i. Specialty Systems – indicate location of clocks, time clocks, security cameras (interior and exterior) and card access (interior and exterior) requirements along with the required electrical service & conduits.

- j. Audio Visual – AV systems & equipment will be provided by the client. Electrical drawings to indicate required electrical service and conduits required for the AV equipment which will occur in the building.

#### 10. Communications Cabling

- a. IDF rooms – indicate configuration of IDF rooms including rack/cabinet locations and cable tray, backer board location and ground bar locations.
- b. Communications cabling – prepare drawings outlining the specifications of the CAT 6 cabling within the building.
- c. Rack/Cabinet elevations - prepare elevation drawings showing the organization of the racks & cabinets in each IDF.
- d. Provide required electrical and raceways as required to support the network equipment & cabling.

#### 11. Security design

- a. Prepare plans indicating the location of cameras to be located exterior to the building (on ground mount poles), cameras on the building and interior of the building.
- b. Card Access System – indicate the location of new card access locations (card readers and door monitoring).
- c. Provide required electrical and raceways as required to support the security equipment, devices & cabling.

#### 12. Project Manual

- a. To contain written specifications which provide the detailed requirements for the above scope of work.

#### 13. As-Built Drawings & As-Built Project Manual

- a. The design team to update all of the construction drawings and specifications to reflect the various modifications to the design made in the field (to be recorded by the Design-Builders personnel) to create a “Record Set” of drawings and specifications.

### **Construction Administration**

Each design discipline is to include within their scope of services:

1. All required meetings, coordination and revisions to documents required to obtain permits/approvals.
2. Review of all subcontractors shop drawings & submittals
3. Response to all subcontractor RFI's
4. Visits to the site to observe the work on a minimum of a monthly basis.
5. Civil, landscaping, structural, mechanical, plumbing, fire protection, electrical, communications cabling and security disciplines to each include an additional (40) hours of on-site meetings with the City of Charlotte to consult on various coordination topics which may arise during construction (this is in addition to the monthly site observations outlined above). In addition the scope is to include (2) Punch List inspections to review the work in place and (2) return trips to the site to review the work in place and verify that it is complete.

### **Reimbursable Expenses**

The cost of all printing, copies, travel, lodging, postage, communications services (phone, fax, cell phone, internet & data plans) and IT equipment/systems is to be included as a lump sum not to exceed amount.

## **BUILDING PERMITS**

The Design-Builder is to include the cost associated with obtaining the following permits.

1. City of Charlotte Erosion Control & site development permits
2. Mecklenburg County Building Permit
3. Any review fees associated with state Fire Marshal review
4. Charlotte Water Review fees (water and sewer)
5. Permit fees associated with geothermal wells

Water & Sanitary Tap & usage fees/assessments are to be paid directly by City of Charlotte.

## **UTILITIES**

The Design-Builder is to coordinate with each of the utility providers to bring new services or alter existing services as required to the building(s). Utilities include electric, water, sanitary sewer and telephone/internet.

## **SAFETY**

The Design-Builders are responsible for implementing their own safety program for the areas under construction until turn over and acceptance by City of Charlotte.

## **COORDINATION MEETINGS**

The Design-Build team (architect, engineers and appropriate construction personnel) will conduct a weekly meeting and/or conference call with CFD, City of Charlotte, JLL and City of Charlotte's vendors to conduct for the duration of the project.

## **CONSTRUCTION LOGISTICS**

The Design-Builder shall perform all construction activities so as not impact the existing firehouse operation. This includes the Design-Builder taking precautions as needed to not allow dust, dirt and traffic to affect the operations of the firehouse.

## **SUSTAINABILITY**

The City of Charlotte is targeting LEED v4 ID+C certification at a minimum of a Certified level or greater for this project. As part of the certification process, the following City of Charlotte environmental goals shall be met by the project's design and construction team:

- Full electrification (no on-site fossil fuel use)
- Application of energy efficiency technologies and strategies sufficient to achieve 25% energy savings (vs ASHRAE 90.1-2010 baseline)
- Usage of sustainable materials and construction methods to achieve a 10% embodied carbon reduction (vs industry baseline)
- Low-flow fixtures and efficient landscape irrigation to reduce potable water usage by 20% (vs LEED baseline)
- Diversion of 75% of construction waste from landfill (percentage by weight, requires on-site sorting per LEED standards)

Design-Builder shall include the construction efforts required to obtain certification as part of their proposal and breakout the additional fees associated with obtaining certification as a separate line item in the fee proposal. Certification administration for the LEED certification and Zero Carbon certification to be performed by JLL Sustainability Consultant team.

## **OWNER PROVIDED AND DESIGN BUILDER INSTALLED ITEMS INCLUDE:**

- Kitchen Appliances (excluding Hood)
- Washer and Dryers

- Lighting Controls
- Portable Emergency Generator(s)
- EV Chargers (Discuss with GC)
- Card Readers (equipment and wiring)
- Cabling and Outlets for data
- Cameras (equipment and wiring)
- Alerting System (equipment and wiring)
- ATX (equipment and wiring)
- Gear Extractor
- Drying Cabinet
- Vehicle Exhaust System
- Hose Reel
- Cascade System/Breather Air Compressor
- Copiers
- Trash and Recycling Collection
- Grill

## **CONSTRUCTION TEAM SCOPE OF SUSTAINABILITY SERVICES**

### **GENERAL CONDITIONS**

Coordinate with the Owner, Design Team, LEED Consultant, and Commissioning Authority on all matters relating to LEED requirements. All documents referenced in this report will be made available to the Construction Team electronically. Design-Builder must designate a team member responsible to respond to the LEED Consultant on all LEED related items. The designated person should have knowledge of the LEED standard with a preference for LEED version 4.

#### **Coordination with the Subcontractors**

Ensure that LEED and Zero Carbon requirements, as defined in the contract documents, are fully implemented by the trade subcontractors. Substitutions or other changes to the work proposed by the subcontractors shall not be allowed if such changes compromise the project's LEED or Zero Carbon requirements.

### **LEED COMPLIANT PLANS**

Provide written plans in accordance with the LEED Action Plans detailed in Specification Section 01 81 13 Sustainable Design Requirements. All plans are requested prior to applicable work commencing:

- Construction Waste Management and Disposal
- Construction Indoor Air Quality Management
- Erosion and Sedimentation Control

#### **The following LEED credits require coordination by the GC:**

1. **EAp1/EAc1: Fundamental Commissioning and Verification (REQUIRED) / Enhanced Commissioning (4-5 points)**
  - a. GC to coordinate with the commissioning agent (CxA) and subcontractors on scheduling, documentation and integrating activities into the overall project schedule for commissioning scope per LEED requirements. The following commissioning activities are included:
    - i. CxA reviews contractor submittals
    - ii. CxA verifies installation and performance of applicable systems
    - iii. CxA performs functional performance testing
    - iv. CxA develops manual for commissioned systems
    - v. CxA verifies training requirements are completed

2. **MRp1/MRc6: Construction and Demolition Waste Management Planning (REQUIRED)**
  - a. Develop and implement a construction and demolition waste management plan:
    - i. Establish waste diversion goals that diverts a minimum of 75% the appropriate demolition and construction debris from the waste stream for the project by identifying at least five waste streams (both structural and nonstructural) targeted for diversion. Approximate a percentage of the overall project waste that these materials represent.
    - ii. Specify whether materials will be separated or commingled and describe the diversion strategies planned for the project. Describe where the material will be taken and how the recycling facility will process the material.
  - b. Reduce total waste material and do not generate more than 2.5 lbs/ft<sup>2</sup> (12.2 kg/m<sup>2</sup>) of the building's floor area.
  - c. Provide oversight and coordination of the plan's implementation
  - d. Provide monthly progress reports with the following information:
    - i. Monthly quantities of diverted and non-diverted materials, broken down by waste stream
    - ii. Project to date quantities of diverted and non-diverted material, broken down by waste
  - e. Closeout documentation: a final report detailing all major waste streams generated, including disposal and diversion rates.
  - f. Alternative daily cover (ADC) does not qualify as material diverted from disposal. Land-clearing debris is not considered construction, demolition, or renovation waste that can contribute to waste diversion (and should be excluded from calculations).

### 3. LEED Materials-Related Credits

- a. Relates to all the following LEED v4.1 credits. See linked USGBC Reference for detailed requirements.
    - i. MRc3 BPDO (Building Product Disclosure and Optimization)- EPDs (Environmental Product Declarations)
    - ii. MRc4 BPDO- Sourcing of Raw Materials
    - iii. MRc5 BPDO- Material Ingredients
  - b. [Using Green Badger software] provided through Sustainability Consultant, GC to verify that products used contribute to the achievement of at least one LEED credit for each of the BPDO LEED credits.
4. **EQc2: Low-Emitting Materials**, LEED v4.1 credit (1-3 Points). See linked USGBC Reference for detailed requirements.
    - a. Relates to low-emitting products in the following categories:
      - i. Interior paints and coatings
      - ii. Interior adhesives and sealants applied on site (including flooring adhesive)
      - iii. Flooring
      - iv. Composite Wood
      - v. Ceilings, walls, thermal, acoustic insulation
      - vi. Furniture
      - vii. Inherently non emitting sources. Products that are inherently non emitting sources of VOCs (e.g. stone, ceramic, powder-coated metals, plated or anodized metal, glass, concrete, clay brick, and unfinished/untreated solid wood flooring) are

considered fully compliant if they do not include surface coatings, binders, or sealants.

- b. [Using Green Badger software] provided through Sustainability Consultant, GC to verify that products used contribute to the achievement of at least 3 LEED points for this credit.

**5. EQc3: Construction Indoor Air Quality Management Plan**

- a. Develop and implement an indoor air quality (IAQ) management plan for the construction and preoccupancy phases of the building. The plan must address the following:
  - i. During construction, meet or exceed all applicable recommended control measures of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guidelines for Occupied Buildings under Construction, 2nd edition, 2007, ANSI/SMACNA 008–2008, Chapter 3.
  - ii. Protect absorptive materials stored on-site and installed from moisture damage.
  - iii. Do not operate permanently installed air-handling equipment during construction unless filtration media with a minimum efficiency reporting value (MERV) of 8, as determined by ASHRAE 52.2–2007, are installed at each return air grille and return or transfer duct inlet opening such that there is no bypass around the filtration media. Immediately before occupancy, replace all filtration media with the final design filtration media, installed in accordance with the manufacturer’s recommendations.
  - iv. Prohibit the use of tobacco products inside the building and within 25 feet (7.5 meters) of the building entrance during construction.
  - v. Provide oversight and coordination of the plan’s implementation.
  - vi. Provide three or more progress reports on IAQ Plan-related activities through email or Green Badger, including photos.
  - vii. Closeout Documentation: Provide all LEED required closeout documentation in accordance with the Plan.

**6. EQc4: Indoor Air Quality Assessment: Flushout**

- a. Conduct a pre-occupancy flushout. Install new filtration media and perform a building flush-out by supplying a total air volume of 14,000 cubic feet of outdoor air per square foot of gross floor area while maintaining an internal temperature of at least 60°F and no higher than 80°F and relative humidity no higher than 60%

**ZERO CARBON REQUIREMENTS**

**1. Embodied Carbon Reduction**

- a. Provide Project Materials Cost and Quantity Data (Bill of Materials): Provide statement indicating total cost and amount used for materials used for Project. Material Costs exclude labor, overhead, and profit. Include breakout of costs and material quantities in units noted for the following categories of items:
  - i. Concrete Foundations (cubic yd)
  - ii. Concrete Structure (cubic yd)
  - iii. Structural Steel (lbs)
  - iv. Cold-Formed Metal Studs (lbs)
  - v. Dimension Lumber (cubic yd)
  - vi. Composite Wood (cubic yd)
  - vii. Exterior Wall or Roof Panels (sq ft)
  - viii. Fenestration (sq ft)

- ix. Insulation (sq ft RSI)
- x. Roof Sheathing (sq ft)
- xi. Roof Membrane (sq ft)
- xii. Site Paving (cubic ft)
- xiii. Aluminum Extrusions (lb)
- xiv. Finishes (sq ft)
- xv. Gypsum Board (sq ft)
- xvi. Interior Furnishings (unit)

## 2. PV Solar Coordination

- a. Coordinate with design-build solar contractor to determine feasibility and cost estimate for a solar PV array meeting the Zero Carbon requirements and the City's PV Performance specifications [if applicable].
- b. If PV is determined to be feasible, coordinate work of solar contractor.

## 3. Blower Door Testing

- a. Blower door testing to be performed per the ASTM E779 standard. The whole building air leakage rate under normal operating conditions shall be determined by two separate blower door tests: one test holding the building under negative pressure and one test holding the building under positive pressure. 50 Pascals of pressure differential shall be obtained between the building interior and exterior in both tests. The whole building air leakage rate shall be reported as the average of the results of both tests (negative and positive pressurization). The air leakage rate shall be reported in units of ACH50 (total whole building air exchanges per hour at 50 Pascals of pressure difference).
  - i. The target is 1.5 ACH.
  - ii. The maximum is 2 ACH.
- b. Project Type Applicability:
  - i. For ground-up freestanding buildings, whole building blower door testing shall be performed once after substantial completion of construction, prior to occupancy.
  - ii. For tenant buildouts inside freestanding buildings, blower door testing shall be performed once at substantial completion, prior to occupancy.
  - iii. For tenant buildouts inside multi-tenant buildings, blower door testing is not required.

Blower door test results shall be provided to Sustainability Consultant

**Request for Qualifications for  
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(RFQ#: 269-2024-114)**

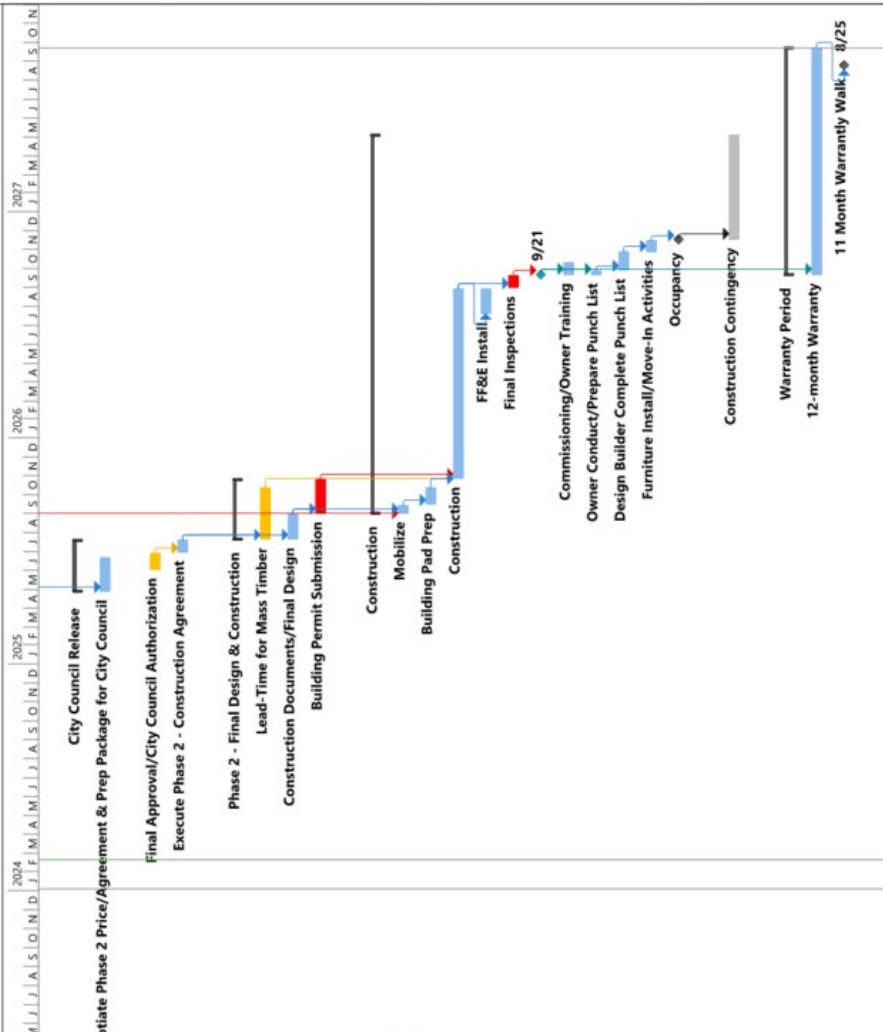
**EXHIBIT B – DETAILED PROJECT SCHEDULE**

## DETAILED PROJECT SCHEDULE

ID	Task Name	Duration	Start	Finish
1	Owner's Advisor Contract Execution	0 days	Fri 3/1/24	Fri 3/1/24
2	RFQ - Design-Builder	90 days	Mon 3/4/24	Fri 7/5/24
3	City/JLL establish Phase 1 & Phase 2 DB Scope	2 wks	Mon 3/18/24	Fri 3/29/24
4	JLL Draft RFP	2 wks	Mon 4/1/24	Fri 4/12/24
5	Review by City of Charlotte	1 wk	Mon 4/15/24	Fri 4/19/24
6	JLL Update/Finalize RFP	55 days	Mon 4/22/24	Fri 7/5/24
7	Solicit BD Proposals	1 wk	Mon 4/22/24	Fri 4/26/24
8	Post on Bonfire	5 wks	Mon 4/29/24	Fri 5/31/24
9	DB's prepare Proposals	2 wks	Mon 6/3/24	Fri 6/14/24
10	JLL/City Evaluate select short list	2 wks	Mon 6/17/24	Fri 6/28/24
11	Interview Short List	1 wk	Mon 7/1/24	Fri 7/5/24
12	Preliminary Award	70 days	Mon 7/1/24	Fri 10/4/24
13	Engage Design-Builder	10 wks	Mon 7/1/24	Fri 9/6/24
14	Negotiate Contract Terms	4 wks	Mon 9/9/24	Fri 10/4/24
15	Execute Pre-Construction Agreement	205 days	Mon 10/7/24	Fri 7/18/25
16	Phase 1 - Design/Precon	6 wks	Mon 10/7/24	Fri 11/15/24
17	Finalize Programming & SD	3 wks	Mon 11/18/24	Fri 12/6/24
18	Prepare Construction Estimate	2 wks	Mon 12/9/24	Fri 12/20/24
19	Prepare Budget to submit for June 2025 City Council Meeting	10 wks	Mon 12/9/24	Fri 2/14/25
20	Design Development	10 wks	Mon 2/17/25	Fri 4/25/25
21	Civil Construction Documents	12 wks	Mon 11/25/24	Mon 2/17/25
22	Design Builder Obtain Subcontractor Bids/Prepare Final Construction Cost	10 wks	Mon 2/17/25	Fri 4/25/25
23	Submit Civil & Foundation Package for Plan Review	12 wks	Mon 4/28/25	Fri 7/18/25

ID	Task Name	Duration	Start	Finish
29				
30	<b>City Council Release</b>	<b>60 days</b>	<b>Mon 4/28/25</b>	<b>Fri 7/18/25</b>
31	Negotiate Phase 2 Price/Agreement & Prep Package for City Council	8 wks	Mon 4/28/25	Fri 6/20/25
32	<b>Final Approval/City Council Authorization</b>	<b>4 wks</b>	<b>Mon 6/2/25</b>	<b>Fri 6/27/25</b>
33	Execute Phase 2 - Construction Agreement	3 wks	Mon 6/30/25	Fri 7/18/25
34				
35	<b>Phase 2 - Final Design &amp; Construction</b>	<b>70 days</b>	<b>Mon 7/21/25</b>	<b>Fri 10/24/25</b>
36	Lead-Time for Mass Timber	12 wks	Mon 7/21/25	Fri 10/10/25
37	Construction Documents/Final Design	6 wks	Mon 7/21/25	Fri 8/29/25
38	Building Permit Submission	8 wks	Mon 9/1/25	Fri 10/24/25
39				
40	<b>Construction</b>	<b>436 days</b>	<b>Mon 9/1/25</b>	<b>Mon 5/3/27</b>
41	<b>Mobilize</b>	<b>2 wks</b>	<b>Mon 9/1/25</b>	<b>Fri 9/12/25</b>
42	Building Pad Prep	4 wks	Mon 9/15/25	Fri 10/10/25
43	Construction	44 wks	Mon 10/27/25	Fri 8/28/26
44	FF&E Install	6 wks	Mon 7/20/26	Fri 8/28/26
45	Final Inspections	3 wks	Mon 8/31/26	Fri 9/18/26
46	<b>Substantial Completion</b>	<b>0 days</b>	<b>Mon 9/21/26</b>	<b>Mon 9/21/26</b>
47	Commissioning/Owner Training	3 wks	Mon 9/21/26	Fri 10/9/26
48	Owner Conduct/Prepare Punch List	1 wk	Mon 9/21/26	Fri 9/25/26
49	Design Builder Complete Punch List	22 days	Mon 9/28/26	Tue 10/27/26
50	Furniture Install/Move-In Activities	13 days	Wed 10/28/26	Fri 11/13/26
51	<b>Occupancy</b>	<b>0 days</b>	<b>Mon 11/16/26</b>	<b>Mon 11/16/26</b>
52				
53	<b>Construction Contingency</b>	<b>6 mons</b>	<b>Tue 11/17/26</b>	<b>Mon 5/3/27</b>
54				
55	<b>Warranty Period</b>	<b>262 days</b>	<b>Mon 9/21/26</b>	<b>Tue 9/21/27</b>
56	12-month Warranty	262 days	Mon 9/21/26	Tue 9/21/27
57	11 Month Warranty Walk	0 days	Wed 8/25/27	Wed 8/25/27
58				

**EXHIBIT B**  
Project Schedule  
River District Firehouse



**Request for Qualifications for  
Progressive Design-Build Services for CFD River District Firehouse  
(RFQ#:269-2024-114)**

**EXHIBIT C SAMPLE MWSBE OUTREACH PLAN**

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## **Sample Outreach Plan**

### **Public Media Announcement**

*Place an ad in local news papers to announce award and express firm's commitment to local and diverse contracting opportunities for this project*

Timeline: ASAP after selection announcement

### **Outreach Event - MWSBE Community Meet & Greet**

*In person event to the MWSBE contractor community to learn more about the project, project timelines and give MWSBE Firms the opportunity to meet the project team.*

Timeline: Month/year (early in project, prior to bid opening)

### **MSBE Community Bidding Class**

*Firm will present & host a series of bidding workshops utilizing local community partnerships & membership in professional associations and engage CBI certified firms on the bidding process for the project.*

Timeline: (prior to bid opening)

- Class One (Community Partner) (Date)
- Class Two (Professional Organization) (Date)

### **Firm Breakdown of Bid Packages & Compliance Overview**

*Selected Firm will coordinate & host a project scope review meeting to identify package breakdown opportunities. This meeting is internal to project team and owners only and intended to maximize MWSBE participation.*

Timeline: Month, Year (prior to bid opening)

### **Outreach Event – Project Kick Off**

*Meet the Project Team, provide detailed project description, timeline for solicitation & bid opening, introduction of CBI requirements to interested bidders, package descriptions, Q&A.*

Timeline: Month, Year (prior to bid opening)

### **Outreach Event: First Tier – Second Tier Matchmaking**

*Introduce first tier subcontractors to potential second tier CBI certified vendors. Mandatory for first tier subcontractors.*

Timeline (after bid opening; prior to bid day)

### **Open Office Hours - Bid Compliance**

*Leading up to bid day, open office hours for bidders with the option to review required documents/CBI forms for compliance. (Not a review of the bid / bid budget)*

Timeline: multiple dates, 0-21 days prior to bid day

### **MWSBE Partner Orientation**

*Selected Firm will host a MWSBE Partner Trade Orientation to focused on "how to be successful on the job; confirm project contacts; requirements/expectations; resources available on jobsite; etc.*

Timeline: after subcontractor selection; prior to project start date

### **Opportunity to be included in Private Partner Programs**

*If selected firm has a Supplier Diversity Program &/or Resources available for Diverse Suppliers, CBI vendors would be given the opportunity to be included. Examples include: Educational Opportunities (Contractor Development Programs); Workforce Development Opportunities etc.*

## Sample MWSBE Outreach Plan Components

Define Participation Plan Goal	<p>Examples</p> <ul style="list-style-type: none"> <li>i. <i>Maximize Utilization &amp; Inclusion of MWSBE Firms</i></li> <li>ii. <i>Commitment to MWSBE firm Growth &amp; Development</i></li> </ul>
Define Target MWSBE Market	<p>Example</p> <ul style="list-style-type: none"> <li>i. <i>Charlotte Region MWSBE firms</i></li> </ul>
Community Partner Engagement	<p>Identify potential community partners</p> <ul style="list-style-type: none"> <li>i. <i>CLT can provide assistance in identifying potential community partners</i></li> </ul>
Communication Methods that will be used to inform target audience about upcoming opportunities.	<p>Examples:</p> <ul style="list-style-type: none"> <li>i. <i>Project Website or Page to list Subcontracting Opportunities</i></li> <li>ii. <i>Email Blasts to potential subcontractors</i></li> <li>iii. <i>Social Media posts</i></li> <li>iv. <i>News &amp; Trade Journals</i></li> </ul>
Outreach Events	<p>Examples:</p> <ul style="list-style-type: none"> <li>i. <i>Meet &amp; Greet Outreach Meeting</i></li> <li>ii. <i>Bidding Class to assist MWBE Firms interested in submitting a bid</i></li> <li>iii. <i>Bid Package Review– to review project scope &amp; identify opportunities to breakdown packages in scope</i></li> <li>iv. <i>MSWBE Firms &amp; Subcontractor Matchmaking – host meet and greet to introduce MWSBE firms with established subcontractors</i></li> </ul>
Communication/Outreach Calendar	<p>Commitment to creating a calendar to schedule these meetings if selected</p>

**Request for Qualifications for  
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(RFQ#:269-2024-114)**

**EXHIBIT D SAMPLE CONTRACT**

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DBIA DOCUMENT 544: PROGRESSIVE DESIGN BUILD AGREEMENT (REVISED)

DBIA DOCUMENT 535: STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN  
OWNER AND DESIGN-BUILDER (REVISED)



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# PROGRESSIVE DESIGN-BUILD AGREEMENT

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## **Document No. 544**

Second Edition 2024

© Design-Build Institute of America

Washington, DC



# Progressive Design-Build Agreement

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

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

**OWNER:**  
City of Charlotte  
600 East 4th Street  
Charlotte, North Carolina 28202

**DESIGN-BUILDER:**  
\_\_\_\_\_  
\_\_\_\_\_  
Charlotte, North Carolina \_\_\_\_\_

**PROJECT: Progressive Design Build Services for Charlotte Fire Department River District Firehouse 44 – Phase II**

**CONTRACT NUMBER:** \_\_\_\_\_

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

# **Article 1**

## **General**

NOTE: *This is not the standard DBIA document. This document is based on the DBIA form, but it has been modified.*

- 1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract").
- 1.3 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement in a manner consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.
- 1.4 Design-Builder and Owner agree that terms of this Agreement supersede and replace any prior letter of intent or agreement between the parties related to the Project. In addition, any Work performed by Design-Builder under a prior letter of intent or agreement prior to the date of this Agreement, shall be deemed to have been performed under the terms of and subject to this Agreement.
- 1.5 Owner's Budget for the Project is \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) for both Phase 1 and Phase 2. The price for Phase 1 and Phase 2 services shall not exceed this amount, except when Owner approves in writing any changes to the Phase 2 amount.

# **Article 2**

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

- 2.1 General Services.
  - 2.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.
  - 2.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Builder. 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.

2.1.3 Design-Builder will be required to provide quality assurance and quality control services for its Phase 1 and Phase 2 Services. Independent of those Design-Builder services Owner may provide or contract for inspection services, testing of construction material engineering and verification testing services. Design-Builder will be required to provide management for coordination of these services.

2.2 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 generally set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 7.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

2.2.1 The Parties acknowledge that Exhibit A ("Owner's Project Criteria") and Exhibit I ("Performance Standards") are incomplete and require further collaboration to finalize. During Phase 1 the parties shall meet, revise and finalize these Exhibits. The Performance Standards exhibit will also include the Acceptance protocols which include but are not limited to notifications, communication, testing, procedures, methodologies, and reporting. The Commissioning Agent will include a report to the City. Phase 1 Services shall include completion of the design and issuance of Construction Documents for the Project. Design-Builder shall obtain bids from Subcontractors for Phase 2 services.

2.3 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the performance of construction services for the Project, the commissioning start-up testing 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 Section 2.3.4.

2.3.1 Design-Builder shall prepare and submit to Owner Project Plans which will include the following: a Project Health and Safety Plan, a Quality Assurance/Quality Control Plan for design and construction, a Risk Management Plan, and a Site Logistics Plan.

2.3.2 Design-Builder will prepare and submit the Project Plans in accordance with an agreed upon submittal schedule.

2.3.3 Owner shall review the Project Plans within the durations detailed on the project schedule. The Parties will meet to discuss the Project Plans and the incorporation of Owner's comments, after which Design-Builder will finalize the Project Plans.

2.3.4 Upon completion of (i) the Phase 1 Services and any other Basis of Design Documents upon which the Parties may agree are needed for the procurement for all labor, materials and equipment, (ii) the completion of said procurement and (iii) the receipt of bids from Subcontractors, the Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of construction for the Project for the Contract Price. The Contract Price will be based on the Cost of the Work, the Design-Builder's Fee with an option for a Guaranteed Maximum Price (GMP).

2.3.4.1 Design-Builder shall supply a set of construction documents for the completed Work to Owner at the conclusion of construction. The documents will note any changes made during construction.

2.3.4.2 Design-Builder shall implement the Project Plans developed pursuant to Section 2.3.

2.4 Proposal for Contract Price. Upon completion of (i) the Phase 1 Services and any other Basis of Design documents upon which the Parties may agree are needed for the procurement for all labor, materials and equipment, (ii) the completion of said procurement and (iii) the receipt of bids from Subcontractors, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of construction for the Project for the Contract Price. The Contract Price will be based on the Cost of the Work, Design-Builder's Fee with an option for a Guaranteed Maximum Price (GMP). For any Early Work Packages, Design-Builder shall submit to Owner an Early Work Package Price Proposal in accordance with Section 2.4.4 of the General Conditions.

2.4.1 Design-Builder will develop a Baseline Project Price Model, to be used for all GMP estimates and Amendments. The model will be in sufficient line-item by line-item detail to enable Owner a complete understanding of the Project Price and will include all assumptions, qualifications, exclusions, constraints and any accompanying detailed pricing schedules to support line items. The model shall show details for the Cost of Work broken down in CSI Master Format inclusive of any Early Work Packages (presented separately) or the manner Design-Builder chooses and such additional sections for the Design- Builder contingency, Design-Builder's Fee and Allowances.

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

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

- i. Design-Builder's Fee as defined in Article 7 of this Agreement;
- ii. The estimated Cost of the Work as defined in Article 7 hereof, inclusive of any Design-Builder's Contingency as defined in Article 7 hereof; and
- iii. If applicable, any prices established under Article 7 of this Agreement; and
- iv. The Cost of the Work items as defined in Section 7.5 that are typically and routinely considered as General Conditions costs will be broken out in detail line-item by line-item to allow Owner a complete understanding of those costs along with all conditions, assumptions, exclusions; and

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

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

2.4.2.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Article 6 hereof, and a critical path Project Schedule for the Work upon which the Scheduled Substantial Completion Date is based;

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

2.4.2.6 If applicable, a schedule of alternate prices;

2.4.2.7 If applicable, a schedule of unit prices and estimated quantities;

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

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

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

#### 2.4.3 Review and Adjustment to Proposal.

2.4.3.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and 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. Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

2.4.3.2 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 (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.

2.4.3.3 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 2.3.2.3 above; or

ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or

iii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof. Owner may require Design-Builder to assign the Design Consultant's contracts to the City and the Design Consultants shall agree to such assignments.

2.4.3.4 If after expiration of the time period for acceptance set forth in the Proposal, Owner fails to exercise any of the options under Section 2.3.2. within ten (10) days of written notice from Design-Builder, then this Agreement shall be deemed terminated for convenience, and Owner shall pay Design-Builder in accordance with Article XX of this Agreement.

#### 2.5. Key Personnel Individuals and Corporate Entities

2.5.1 Design-Builder shall provide the Key Personnel Individuals and Corporate Entities as shown on Exhibit XX. In the event Design-Builder seeks to replace any of the individuals or entities in Exhibit XX, Design-Builder will provide Owner with a written request for any replacement stating the reason for the replacement; identification of the replacement Key Personnel Individual; the qualifications and experience and references to demonstrate that replacement is equally or better qualified and experienced.

2.5.1.1 Owner shall be entitled to meet and interview any Key Personnel Individual replacement at Design-Builder's expense. Replacement Key Personnel Individual's cost to the Project shall not exceed the cost to the Project of the Key Personnel Individual who is being replaced.

2.5.1.2 Design-Builder must obtain written approval from Owner prior to changing any Key Personnel Individuals or Corporate Entities.

## 2.5.2 Licensed Design Professionals Selection

2.5.2.1 Design-Build Team Member means any individual or business or corporate entity that will provide any of the Phase 1 Services or Phase 2 Services.

2.5.2.2 Design Builder certifies that each licensed design professional who is a member of the Design-Build Team including subconsultants shown on Exhibit J was selected upon demonstrated competence and qualifications in a manner provided by G.S. 143-64.31. Design-Builder also certifies that any licensed design professional including subconsultants who is selected to be a member of the Design-Build Team will be selected upon demonstrated competence and qualification in a manner provided by G.S. 143-64.31.

2.5.2.3 Design-Builder shall obtain written approval from Owner prior to changing any licensed contractors, licensed subcontractors and licensed design professionals shown on Exhibit J.

## **Article 3**

### **Contract Documents**

3.1 The Contract Documents are comprised of the following:

3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract"); and

3.1.2 The Contract Price Amendment referenced in Section 2.4.3.2 of this Agreement or the Proposal accepted by Owner in accordance with Section 2.3.4 herein.

3.1.3 This Agreement, including all Exhibits A through H listed below:

Exhibit A	OWNER'S PROJECT CRITERIA
EXHIBIT B	SCOPE OF SERVICES
EXHIBIT C	INSURANCE REQUIREMENTS FOR DESIGN-BUILDER
EXHIBIT D	CHARLOTTE BUSINESS INCLUSION (CBI) FORMS
EXHIBIT E	SCHEDULE FOR PHASE 1 SERVICES
EXHIBIT F	FEES
EXHIBIT G	COMMERCIAL NON-DISCRIMINATION FORM
EXHIBIT H	SALES/COUNTY SALES/USE TAX STATEMENT FORM
EXHIBIT I	PERFORMANCE STANDARDS
EXHIBIT J	DESIGN-BUILDER'S KEY PERSONNEL AND CORPORATE ENTITIES

3.1.4 The General Conditions of Contract (see, DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition)) ; and

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

## **Article 4**

### **Interpretation and Intent**

4.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 2.4 of this Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 of this Agreement.

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

4.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

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

## **Article 5**

### **Ownership of Work Product**

5.1 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 are "Work Product" or "Instruments of Service." "Work Product or "Instruments of Service" means representations, in any medium of expression (whether existing as of the date of this Agreement or later developed) of the tangible and intangible creative work of the author prepared in relation to the Project, including architectural and engineering plans and drawings, specifications, computer-aided design, calculations, studies, surveys, models, sketches and other such materials and electronic/digital information produced in relation to the design of the Project. Submission or distribution of Instruments of

Service to meet official regulatory requirements or for similar purposes shall not be construed as publication of the rights of Owner, Design-Builder and Design-Builder's consultants.

5.2 **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 subconsultants of additional documents as Owner may deem necessary to effect 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.

5.3 **Owner's Indemnification for Use of Work Product.** Owner recognizes that in the event of an early termination of the Work that does not include Design-Builder's completion of the design document as part of the Phase 1 services, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 5, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.

## **Article 6**

### **Contract Time**

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

6.2 ***Reserved for and to be amended by Phase 2.*** Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than \_\_\_\_ (\_\_\_\_) calendar days after the Date of Commencement or after the date set forth in the Contract Price Amendment ("Scheduled Substantial Completion Date").

6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved within \_\_\_\_ days of Substantial Completion. 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.

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment but only as provided in the Agreement.

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

6.4 ***Reserved for and to be amended by Phase 2.*** Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by ( ) days after the

Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner \_\_\_\_\_ Dollars (\$) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. Design-Builder acknowledges that these liquidated damages are fair and equitable and reflect the fact that it would be difficult or impossible to accurately assess the full scope of actual damages to Owner if Substantial Completion is not achieved by the LD Date.

6.5 **Reserved for and to be amended by Phase 2.** 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.

6.6 **Reserved for and to be amended by Phase 2.** No Damages for Delay. While Design-Builder is entitled to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall not be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, or for Force Majeure Events.

## Article 7

### Contract Price

7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the 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.

7.1.2 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 the cost plus amount set forth in the Contract Price Amendment once accepted and approved in writing by Owner.

7.2 Cost Plus Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract Price for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.3 Markups for Phase 2 Changes. If the Contract Price requires an adjustment due to change in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of the Contract, the following markups shall be allowed on such changes:

7.3.1 For additive Change Orders and Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ten percent (10%) of the additional costs incurred for that Change Order;

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

***[Check one box only]***

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

7.4 Reserved.

7.5 Reserved.

7.6 **Reserved for Phase 2.**

7.7 Allowance Items and Allowance Values.

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

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

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

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

## **Article 8**

### **Procedure for Payment**

8.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the method described in Section 8.2 below for partial and final payment to Design-Builder for the services hereunder.

8.2 Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the Twenty Fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

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

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

8.3 **Reserved for and to be amended by Phase II. Retainage on Progress Payments.**

8.3.1 Owner will retain five percent (5%) of each Application for Payment of Phase 2.

8.3.2 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) 200 % of 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 the Agreement.

8.4 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 receipt of the Final Application for Payment, provided that: (a) Design-Builder has satisfied the requirements for final payment set forth in the Agreement.

8.5 Interest. Payments due in accordance with this Agreement and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing thirty (30) days after payment per North Carolina General Statutes.

8.6 Audit. Owner, or an agent of Owner, may audit all Design-Builder books, records, and facilities used by Design-Builder in the furtherance of Owner's Agreement and scope of work. Any audit would evaluate Design-Builder's compliance with the terms and conditions of the Agreement or Owner's payment obligations. Owner's right to audit commences on the date the Agreement is executed and expires three (3) years after the Contract's termination or expiration. Prior written notice shall be provided by Owner before an audit may commence and any audit should occur during normal business hours of Design-Builder. Owner shall pay its own expenses for any audit and is not responsible for any expenses or additional costs of Design-Builder. Design-Builder shall reimburse Owner for Owner's audit expenses if the audit finds Design-Builder was non-compliant with the Agreement and the amount of the non-compliance is in excess of five thousand (\$5,000)

## **Article 9**

### **Termination for Convenience**

9.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience (for any reason or no reason) and without cause, elect to terminate this Agreement. In such event, Owner shall only pay Design-Builder for the following and Design-Builder shall not be entitled to recover lost profits, revenue or any other economic loss except as specifically set forth below:

9.1.1 All services performed and Work executed and, cost, or expense in connection with the services and Work; and

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

9.2 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 5 hereof.

9.3 If Design-Builder has proceeded to perform Phase 1 Services pursuant to Section 2.2.1, then Owner and Design-Builder mutually agree to terminate this Agreement upon completion of all Phase 1 Services.

Design-Builder shall have no further liability or obligations to Owner under this Agreement; provided, however, that Design-Builder may perform additional design work for Owner as described in Exhibit B – Scope of Services.

## **Article 10**

### **Representatives of the Parties**

#### 10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative (“Owner Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Kathleen Cishek  
Division Manager  
City of Charlotte  
General Services Department, Facilities Design and Construction Division  
600 East 4th Street  
Charlotte, NC 28202  
Phone: (704) 432-5214  
Email: Kathleen.Cishek@charlottenc.gov

10.1.2 Owner designates the individual listed below as its Owner’s Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

\_\_\_\_\_  
Project Manager  
City of Charlotte  
General Services Department, Facilities Design and Construction Division  
600 East 4th Street  
Charlotte, NC 28202  
Phone: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Email: \_\_\_\_@charlottenc.gov

#### 10.2 Design-Builder’s Representatives.

10.2.1 Design-Builder designates the individual listed below as its Senior Representative (“Design-Builder’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

[NAME]  
[TITLE]  
[COMPANY NAME]  
[STREET ADDRESS]  
Charlotte, NC [ZIP]  
Phone: \_\_\_\_  
Email: \_\_\_\_\_

10.2.2 Design-Builder designates the individual listed below as its Design-Builder’s Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Darryl Kellough

[NAME]  
[TITLE]  
[COMPANY NAME]  
[STREET ADDRESS]  
Charlotte, NC [ZIP]  
Phone: \_\_\_\_  
Email: \_\_\_\_\_

## **Article 11**

### **Bonds and Insurance**

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

11.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and payment bond for Phase I Services If any construction services exceeds \$300,000; otherwise, the following are required at the time of the GMP amendment for Phase 2 Services. If construction services are performed in Phase 1, the amount of the bonds shall be equivalent to the amount of the construction services being performed under this phase.

Performance Bond.

Required                       Not Required

Payment Bond.

Required                       Not Required

## **Article 12**

### **Other Provisions**

12.1 Other provisions, if any, are as follows:

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

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

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

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

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

12.1.1.4 Firms are highly encouraged to consider any and all possibilities for MWSBE participation. A complete list of Owner certified SBEs and registered MWBEs are available at [www.charlottebusinessinclusion.com](http://www.charlottebusinessinclusion.com). In evaluating the firm's proposal, the City may take into account: (1) the firm's past performance in meeting MBE, WBE and SBE goals; (2) the firm's Participation Plan; and (3) the Participation Plan submitted by other firms in comparison to the firm's Participation Plan.

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

12.1.2 Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Article 10 of the General Conditions of Contract shall be resolved in Superior Court of Mecklenburg County North Carolina.

## **Article 13**

### **Limitation of Liability**

***Reserved for and to be amended by the Contract Price Amendment in Phase 2.***

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.**

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**EXHIBIT A**  
**OWNER'S PROJECT CRITERIA**

**EXHIBIT B**  
**SCOPE OF SERVICES**

## EXHIBIT C

### INSURANCE REQUIREMENTS FOR DESIGN-BUILDER (INCLUDING CERTIFICATE OF LIABILITY INSURANCE)

Design-Builder, and all its subcontractors, shall provide and maintain at its expense during the term of this Agreement the following program(s) of insurance covering its operations. Such insurance shall be provided by insurer(s) qualified to do business in North Carolina, have a rating at least "A-" by A.M. Best, and be satisfactory to Owner as approved by Owner's Risk Management Division. Evidence of such programs satisfactory to Owner shall be delivered to Owner on or before the effective date of this Agreement and prior to commencing any work hereunder. Such policy shall list "Owner of Charlotte, 600 East Fourth St. Charlotte, NC 28202" as an additional insured for operations or services, rendered under this Agreement. Owner is to be given written notice within thirty (30) days of any termination of any program of insurance.

Design-Builder's insurance shall be primary of any self-funding and/or insurance otherwise carried by Owner for all loss or damages arising from Design-Builder's operations under this Agreement. If any of the coverage conditions are met by a program of self-insurance, Design-Builder must submit evidence of the right to self-insure as provided by the State of North Carolina.

Design-Builder and each of its subcontractors shall and does waive all rights of subrogation against Owner and each of its indemnified parties. Owner shall be exempt from, and in no way liable or responsible for any sums of money that may represent a deductible or self-insured retention in any insurance policy of Design-Builder or its subcontractors.

The following insurance is required under this Agreement:

- a. Automobile Liability. Evidence of current automobile insurance (attach copy of automobile policy declaration page(s) or submit a current certificate of insurance, showing the vehicles covered and coverage amounts as the appropriate one of the following:

If Design-Builder owns or leases commercial vehicles to provide goods or perform a service under this Agreement, Automobile Liability must be provided at a limit of not less than \$\_\_\_\_\_ per occurrence/aggregate, combined single limit, each occurrence, for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.

If Design-Builder does not own or lease any vehicles, but is using their personal vehicles to perform a service under this Agreement, primary Personal Automobile Liability may be provided at limits not less than \$\_\_\_\_\_ 000 each person, \$300,000 each accident and property damage liability of \$\_\_\_\_\_.

If Design-Builder does not own or lease any vehicles, but has employees using their vehicles to provide goods or perform a service under this Agreement, Design-Builder must provide hired/non-owned automobile liability coverage at a limit of not less than \$\_\_\_\_\_ per occurrence aggregate.

If Design-Builder is trucking fuel or hauling potential pollutants, the Automobile Liability coverage shall be broadened to include pollution coverage on covered autos, and a copy of endorsement CA 99 48 shall be provided to Owner. Design-Builder must also supply Owner with evidence of motor carrier endorsement MCS-90 as required by the Federal Motor Carrier Safety Administration's Motor Carrier Act.

- b. General Liability. Insurance with a limit not less than \$\_\_\_\_\_ occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.
- c. Worker's Compensation and Employers Liability. Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$\_\_\_\_\_ per accident limit, \$\_\_\_\_\_ disease per policy limit, \$\_\_\_\_\_ disease each employee limit. If Design-Builder does not employ more than 2 full time employees, Design-Builder must attest this fact on Design-Builder letterhead and include such letter in this Agreement.

**EXHIBIT D**

**CHARLOTTE BUSINESS INCLUSION (CBI) FORMS**

**EXHIBIT E**  
**SCHEDULE FOR PHASE I SERVICES**

**EXHIBIT F**  
**FEES**

**EXHIBIT G**

**COMMERCIAL NON-DISCRIMINATION CERTIFICATION FORM**

Project: \_\_\_\_\_  
Name of Company \_\_\_\_\_

The undersigned Design-Builder hereby certifies and agrees that the following information is correct:

1. In preparing the proposal, Design-Builder has considered all proposals submitted from qualified, potential subcontractors and suppliers and has not engaged in or condoned discrimination, as defined in Section 2 below.
2. For purposes of this form discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability, or any otherwise unlawful form of discrimination as those terms are further defined in Section 2, Article V of the Charlotte City Code. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that Owner may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for Owner to reject the proposal submitted with this certification and terminate any contract awarded based on such proposal. It shall also constitute a violation of Owner's Commercial Non-Discrimination Ordinance and shall subject Design-Builder to any remedies allowed thereunder, including possible disqualification from participating in Owner contracts for up to two years.
4. As a condition of contracting with Owner, Design-Builder agrees to promptly provide to Owner all information and documentation that may be requested by Owner from time to time regarding the solicitation and selection of subcontractors in connection with this contract. Failure to maintain or failure to provide such information shall constitute grounds for Owner to reject the proposal submitted by the Bidder and terminate any contract awarded on such proposal. It shall also constitute a violation of Owner's Commercial Non-Discrimination Ordinance (Section 2, Article V) and shall subject Design-Builder to any remedies allowed thereunder.
5. As part of its proposal, Design-Builder shall provide to Owner a list of all instances within the past ten years where a complaint was filed or pending against Design-Builder in a legal or administrative proceeding alleging that Design-Builder discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a proposal to Owner, Design-Builder agrees to comply with Owner's Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte Owner Code, and consents to be bound by the award of any arbitration conducted thereunder.

By: \_\_\_\_\_  
Signature of Design-Builder's Authorized Representative

Title: \_\_\_\_\_

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

**EXHIBIT H  
SALES/USE TAX FORM**

**STATE / COUNTY SALES / USE TAX STATEMENT**

Project: \_\_\_\_\_

Company/Subcontractor \_\_\_\_\_

Period Covered: \_\_\_\_\_ Page: \_\_\_\_\_ of \_\_\_\_\_

Invoice No.	Invoice Date	Vendor's Name	Owner Vendor No.	Amount Before taxes	NC Tax	County Tax	Total Invoice Amount	County Paid

Subtotal (Page 1)	\$	\$	\$	\$
Plus total cost of material withdrawn from our warehouse stock	\$	\$	\$	\$

<b>GRAND TOTAL</b>	\$	\$	\$	\$
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I certify that the above listed vendors were paid sales tax upon purchases of building material during the period covered by the construction estimate, and the property upon which such taxes were paid with or will be used in the performance of this contract. No tax on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to, or in some manner become part of the project, building, structure or repairs included in the above list.

Signed: \_\_\_\_\_

Subscribed and sworn to before me \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
 Signature of Notary \_\_\_\_\_  
 of \_\_\_\_\_ County  
 State of \_\_\_\_\_  
 My Commission \_\_\_\_\_

**EXHIBIT I**  
**PERFORMANCE STANDARDS**

**EXHIBIT J**

**DESIGN-BUILDER'S  
KEY PERSONNEL INDIVIDUALS and  
CORPORATE ENTITIES**

Key Personnel Individuals and Corporate Entities are those identified individuals with their designated titles below who will be assigned to the Project who play an important role in the design, construction, or management of the Project.

For purposes of this Exhibit, the following individuals and titles are identified:

# Standard Form of General Conditions of Contract Between Owner and Design-Builder

**Document No. 535**

Third Edition, 2022

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





## Design-Build Institute of America - Contract Documents LICENSE AGREEMENT

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgment.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

# INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition)

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of Owners, Design-Builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms – familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as “Agreement”). It may also be incorporated by reference into other related agreements, as between Design-Builder and Design Consultant, and Design-Builder and Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 3.5.1 Owner’s Permit List            Article 5 Insurance and Bonds            Section 9.4.2 Unit Prices</p>
2.1.3	Schedule	The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional’s Services	Design-Builder’s obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with Design-Builder’s insurance advisor.
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals, and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner’s Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.
5.1.1	Design-Builder’s Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.
5.1.2	Exclusions to Design-Build	Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.
5.2	Owner’s Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.

Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Section 11.6 of the General Conditions. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as set forth in Article 8 of the Agreement.
11.6.2	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

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# Article 1

## General

### 1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

### 1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under ~~either DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder – Lump Sum (2022 Edition); DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price (2022 Edition); DBIA Document No. 544, Standard Form of Progressive Design-Build Agreement (2022 Edition); or DBIA Document No. 545, Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects (2022 Edition).~~

1.2.1.1 Acceptance means the event that is a condition of Substantial Completion to demonstrate that the Project meets the Performance Standards. Acceptance is reached when the Commissioning Agent sends its final report to Owner.

1.2.2 *Basis of Design Documents* are as follows: ~~For DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the “Basis of Design Documents.” For DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder – Lump Sum, for DBIA Document No. 544, Standard Form of Progressive Design-Build Agreement, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal, and the Deviation List, if any. [This definition language is confusing. I didn’t strike it because perhaps there is context about its source that I need to know. This is my what I recommend go here instead: “Basis of Design Documents are as follows: those documents specifically listed in, as applicable, the Contract Price Exhibit or Contract Price Proposal as being the ‘Basis of Design Documents.’” For DBIA Document No. 545, Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal and the Deviation List, if any.~~

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

**1.2.7** *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

**1.2.8** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

**1.2.9** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, novel pandemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.10** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition).

**1.2.11** ~~The GMP Exhibit will be prepared near the end of Phase 1 means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder—Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.~~

**1.2.12** *GMP Proposal or Proposal* means that proposal developed by Design-Builder in accordance with DBIA Document No. 544, *Progressive Design-Build Agreement* (2022 Edition) means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price* or with Section 2.3 of DBIA Document No. 544, *Progressive Design-Build Agreement*, or DBIA Document No. 545, *Progressive Design-Build Agreement for Water and Wastewater Projects*.

**1.2.13** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.14** *Key Personnel* includes the licensed contractors, licensed subcontractors and licensed design professionals whom the design-builder proposes to use for the project's design and construction as shown on Exhibit XX of the DBIA Document No. 544, *Progressive Design-Build Agreement*, as well as those specific individuals with their designated titles as identified in both the Request for Proposal and the Design-Builder's Proposal and also shown on Exhibit XX. XX of the Agreement.

**1.2.4415** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.4516** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria are in Exhibit XX of the DBIA Document No. 544, *Progressive Design-Build Agreement*, and may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.4617** *Site* is the land or premises on which the Project is located.

**1.2.4718** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.4819** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.4920** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes. At a minimum, Substantial Completion requires the following: achieving Acceptance by demonstrating the Project meets the Performance Standards as described in Exhibit XX of the DBIA Document No. 544, Progressive Design-Build Agreement, as well as complying with the applicable provisions of Section 6.6 of the General Conditions.

**1.2.2021** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2**

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

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account ~~(if any) to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price;~~ and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a critical path schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised, updated and provided to Owner every 30 days unless the as required by conditions and progress of the Work require an earlier update due to potential delays. ~~No schedule revision shall, but such revisions shall not~~ relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), ~~as unless~~ such dates ~~are may be~~ adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures,

including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create **any** legal or contractual relationship between Owner and any Design Consultant.

**2.2.2** Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the foregoing, 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.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

**2.4.1.1** Design Submissions at Programming, Schematic, Design Development, and Construction Documents phases shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

**2.4.1.2** On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.1.3** Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

**2.4.1.4** If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare [Early Work Packages \(i.e., interim Design Submissions and Construction Documents, as further defined in Section 2.4.5\)](#) for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

#### **2.4.5 Early Work Packages**

**2.4.5.1 Early Work Packages are portions of Work that the Parties agree should be executed before the Proposal for construction Work is approved by Owner. The Owner may award Early Work Packages to the Design-Builder to facilitate the early preparation of the Site, purchase long lead time materials and equipment, and otherwise accelerate certain portions of the Work in advance of the agreement between the Owner and Design-Builder regarding the Proposal for the any of the construction Work. These Early Work**

Packages will be ready for commencement of their construction before it is appropriate to arrive at an overall GMP for the entire construction Work.

2.4.5.2 Either Owner or the Design-Builder may propose Early Work Packages to proceed prior to the Owner's approval of the Proposal for construction Work. Once the parties have reduced such agreement in writing, the Design-Builder shall procure and award a subcontract for Early Work Packages before the Proposal for the construction Work has been submitted and approved by Owner. The approved Guaranteed Maximum Price (GMP) amount for the scope of work in any Early Work Package shall be included in the subsequent Proposal for any of the construction Work. The Design-Builder's Fee for billing purposes for such early Work Package scope of work shall not exceed the pro rata portion of the fee that the Cost of Work of the Early Work Package as performed bears to the Owner's Budget.

2.4.5.3 The Owner may choose to accelerate the completion of certain portions of the design work so that the Design-Builder may award specific Early Work Packages prior to the completion of the remaining Construction Documents or acceptance by the Owner of the Proposal for any of the construction Work. The Design-Builder shall prepare a proposal for Owner's review and approval to complete the documents necessary to procure and award any Early Work package. Any Early Work Package shall contain language which makes those subcontracts 100% assignable to Owner at Owner's option, in the event this Agreement is terminated; the Subcontractors shall be obligated to accept that assignment if it should occur. Only additional costs for schedule acceleration as directed and approved by Owner shall be reimbursable as a Cost of Work.

2.4.5.4 After submission of any Early Work Package Proposal, the Design-Builder and Owner shall promptly meet to discuss, review and negotiate the Proposal. Upon acceptance of a Proposal, an amendment to the Agreement shall be executed by the parties to incorporate the Proposal into the Agreement.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.5.3 Key Personnel may not be changed absent written permission from Owner.

## **2.6 Government Approvals and Permits.**

**2.6.1** Except as ~~identified in an Owner's Permit List attached as an exhibit to the Agreement~~ otherwise agreed to in writing by Owner, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility as identified in Exhibit XX – Scope of Services.

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety.**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. ~~If the parties have opted in Section \_\_\_\_ of the Agreement to establish a limited time frame for the warranty set forth in this Section, the warranty in this section shall be limited to the time frame set forth in Section \_\_\_\_ of the Agreement.~~ Design-Builder's warranty obligation excludes defects caused by Owner's abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty or extended warranty expressly provided by Design-Builder or its subcontractors which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a warranty period or period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## Article 3

### Owner's Services and Responsibilities

#### 3.1 Duty to Cooperate.

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

#### 3.2 Furnishing of Services and Information.

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

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

**3.2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**3.2.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**3.2.1.4** A legal description of the Site;

**3.2.1.5** To the extent available, record drawings of any existing structures at the Site; and

**3.2.1.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

#### 3.3 ~~Financial Information.~~

~~**3.3.1** At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.~~

~~3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.~~ Reserved.

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** ~~Owner-Design-Builder~~ shall obtain and pay for ~~all necessary~~ permits, approvals, licenses, government charges and inspection fees ~~associated with the Work, set forth in Owner's Permit List attached as an exhibit to the Agreement.~~

**3.5.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only

after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

## **4.2 Differing Site Conditions.**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

# **Article 5**

## **Insurance and Bonds**

### **5.1 Design-Builder's Insurance Requirements.**

**5.1.1** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

**5.1.2** Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract

Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

## **5.2 ~~Owner's Liability Insurance.~~**

~~5.2.1—Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project. Reserved.~~

## **5.3 ~~Owner's Property Insurance.~~**

~~5.3.1—Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.~~

~~5.3.2—Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.~~

~~5.3.3—Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work. Reserved.~~

~~5.3.4—Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.~~

~~5.3.5—Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of~~

~~subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.~~

#### **5.4 Bonds and Other Performance Security.**

~~5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.~~

~~5.4.2 All bonds furnished by Design-Builder shall be in compliance with all applicable laws, regulations, ordinances and policies and in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state of North Carolina in which the Project is located.~~

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

#### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**6.2.4** The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

### **6.4 Right to Stop Work ~~and Interest.~~**

**6.4.1** If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. ~~All payments due and unpaid shall bear interest at the rate set forth in the Agreement.~~

### **6.5 Design-Builder's Payment Obligations.**

**6.5.1** Design-Builder ~~will~~ shall pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.~~3-1~~ hereof.

### **6.6 Substantial Completion.**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

**6.7.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**6.7.2.3** Consent of Design-Builder's surety, if any, to final payment;

**6.7.2.4** All operating manuals, warranties and other deliverables required by the Contract Documents; and

**6.7.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

~~**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents. Reserved.~~

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **Article 7**

### **Indemnification**

~~**7.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined~~

~~below) proximately caused by the Design-Builder's breach of contract, or negligent, reckless or intentional acts or omissions constituting a tort under applicable statutes or common law, or violations of applicable statutes or regulations, unless the Charges are proximately caused by or resulting from, in whole or in part, the negligence of an Indemnitee. For Purposes of this Section, (a) the term "Indemnitees" shall mean the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Design-Builder) and (b) the term "Charges" shall mean claims, losses, damages, fines, penalties, royalties, obligations, liabilities, and expenses, including but not limited to reasonable attorneys' fees, paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the Owner pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Design-Builder or its subcontractors in connection with this Contract; (iii) arising from the Design-Builder's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Design-Builder or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim filed by an employee or subcontractor of the Design-Builder that such is an employee of the Owner, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like, except to the extent that any of the foregoing results from the action or inaction of an Indemnitee. For purposes of this Section: (a) the term "Indemnitees" means the Owner and each of the Owner's officers, officials, employees, agents and independent contractors (excluding the Design-Builder); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).~~

~~7.2 If an Infringement Claim occurs, the Design-Builder shall shall at its sole expense either: (i) procure for the Owner the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the Owner shall not be adversely affected by such replacement or modification. either: (i) procure for the Owner the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the Owner shall not be adversely affected by such replacement or modification. If the Design-Builder is unable to comply with the preceding sentence within thirty (30) days after the Owner is directed to cease use of a product or service, the Design-Builder shall promptly refund to the Owner all amounts paid under this Contract.~~

~~7.3 This SectionArticle shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).~~

~~7.4. Reserved.~~

#### ~~7.1 Patent and Copyright Infringement Reserved.~~

~~7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.~~

~~7.1.2~~—If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design Builder cannot so procure such right within a reasonable time, Design Builder shall promptly, at Design Builder's option and at Design Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

~~7.1.3~~—Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design Builder to the same extent Design Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

~~7.1.4~~—The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

## ~~7.2~~—~~Tax Claim Indemnification~~Reserved.

~~7.2.1~~—If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design Builder as a result of any action taken by Design Builder in accordance with Owner's directive. Owner shall furnish Design Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design Builder may rely.

## ~~7.3~~—~~Payment Claim Indemnification~~Reserved.

~~7.3.1~~—Provided that Owner is not in breach of its contractual obligation to make payments to Design Builder for the Work, Design Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design Builder liable for costs and expenses incurred, including attorneys' fees.

## ~~7.4~~—~~Design Builder's General Indemnification~~Reserved.

~~7.4.1~~—Except as set forth in Section 7.4.2 below, Design Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

~~7.4.2~~—For indemnity obligations that arise from professional errors and omissions, Design Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or

~~omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.~~

~~7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.~~

## ~~7.5 Owner's General Indemnification Reserved.~~

~~7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Owner, Owner's separate contractors or anyone for whose acts any of them may be liable.~~

## ~~7.6 Limited Recourse.~~

~~7.6.1 None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.~~

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. ~~By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.~~

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events or minor changes in the Work unless otherwise provided in the Agreement.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

#### **9.2 Work Change Directives.**

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

#### **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

#### **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**9.4.1.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**9.4.1.2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

**9.4.1.3** Costs, fees and any other markups set forth in the Agreement; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

# **Article 10**

## **Contract Adjustments and Disputes**

### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## 10.2 Dispute Avoidance and Resolution.

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, ~~then the dispute resolution process of Section 10.3 shall be followed. the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.~~

## 10.3 ~~Arbitration~~Dispute Resolution Process.

**10.3.1 General.** ~~The dispute resolution provisions provided in Article 10 shall be used pursuant to this Agreement and NCGS 143-128(f1) and are in lieu of any dispute resolution process adopted by any other government entity, which process shall not apply to this Project. The provisions of this Article are subject to any other provision of this Agreement concerning: notification and/or the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Article. It is understood and agreed that projects subject to NCGS 143-128(f1) require that disputes arising under an Agreement would be subject to a dispute resolution process specified by the Owner. In compliance with this statutory provision, the Owner specifies this section as the dispute resolution process to be used on this Project, regardless if the Project is or is not subject to NCGS 143-128(f1). It is further understood and agreed that this dispute resolution process is based on non-binding mediation and will only be effective to the extent that the parties to any mediated dispute participate in the mediation in good faith. It is also understood and agreed that the Owner is under no obligation under any circumstance to secure or enforce the participation of any other party in the mediation of any dispute subject to this Article and NCGS 143-128(f1).~~

**10.3.2 Covered Disputes.** ~~Any dispute arising between or among the Parties listed in Section 3.3 of this Article that arises from an agreement to perform services in conjunction with the Project, including without limitation a breach of such agreement, shall be subject to non-binding mediation in accordance with Section 10.3.10 of this Article administered by the American Arbitration Association ("AAA") under the industry appropriate Mediation Rules ("Rules"). To the extent any~~

~~provision of the Rules is inconsistent with the provisions of this section, the provisions of this section shall control. The mediation provided in this section Article shall be used pursuant to this Agreement and NCGS 143-128(f1) and is in lieu of any dispute resolution process adopted by any other government entity, which process shall not apply to this Project. Unless otherwise directed by the Owner in writing, the Design-Builder shall continue performance under this Agreement while matters in dispute are being resolved. The process set forth by this Article may be foregone with respect to a particular dispute, claim, or potential claim upon the mutual written agreement of all parties in interest to the dispute. The following disputes are not subject to mediation: (i) a dispute seeking a non-monetary recovery; and (ii) a dispute seeking a monetary recovery of \$15,000 or less.~~

~~A dispute seeking the extension of any time limit set forth in an agreement to perform the Services for the Project shall be subject to mediation pursuant to this Article and NCGS 143-128(f1), but only if the damages which would be suffered by the Party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such Party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.~~

**10.3.3 Definitions.** For purposes of this Article the following definitions shall apply:

- a. ~~Party or Parties refers to the parties listed in Section 10.3.4 of this Article.~~
- b. ~~Project means project pursuant to this Agreement. The Owner and any Party contracting with the Owner or with any first-tier or lower-tier subcontractor for the performance of the Project agree to participate in good faith in any mediation of a dispute subject to this Article and NCGS 143-128(f1), including without limitation the following Parties (if any): Contractor, independent contractor(s) of the Owner, surety(ies), subcontractor(s), and supplier(s).~~

~~**10.3.4 Inclusion in Contracts/Subcontracts.** The Owner and any party contracting with the Owner or with any first-tier or lower-tier subcontractor for the performance of the Project agree to participate in good faith in any mediation of a dispute subject to this Article and NCGS 143-128(f1), including without limitation the following Parties (if any): Contractor, independent contractor(s) of the City, surety(ies), subcontractor(s), and supplier(s).~~

~~**10.3.5**—The Design-Builder and all other parties shall include this section in every agreement to which it (any of them) is a party in performing the Services of the Project without variation or exception. Failure to do so will constitute a breach of this Contract, and the Design-Builder or other party failing to include this section in any agreement required by this section shall indemnify and hold harmless the remaining parties from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach. Notwithstanding the foregoing provisions of this section, it is expressly understood and agreed that the parties are intended to be and shall be third-party beneficiaries of the provisions of this section and can enforce the provisions hereof.~~

**10.3.1 Notification of Owner.** Notwithstanding the foregoing provisions of this Article, it is expressly understood and agreed that the Parties are intended to be and shall be third-party beneficiaries of the provisions of this Article and can enforce the provisions hereof. If the Owner is not a party to the dispute, the Party requesting dispute resolution must notify the Owner Representative, in writing, of the requested dispute resolution and must include a brief summary of the dispute, including the amount of its alleged monetary value. The written notice must be sent to the Owner Representative prior to the service of the request for dispute resolution upon the parties to the dispute, potential claim, or claim.

**10.3.2 Combined Disputes.** For purposes of this Article, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single Party or two or more Parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all Parties to such disputes. In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.

**10.3.3 Investigation.** Prior to requesting mediation:

- (i)** A Party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining Parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining Party, unless supported by such investigation and good faith belief by the Party requesting the mediation.
- (ii)** If the party requesting dispute resolution is a subcontractor, it must first submit its claim to the prime contractor with whom it has a contract. If the dispute is not resolved through the prime contractor's informal involvement, then the dispute becomes ripe for the dispute resolution process under this Article, and the subcontractor may submit its written notice of dispute resolution to the Owner.

If a Party breaches any provision of Section 10.3.7 of this Article, it shall indemnify and hold harmless all other Parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other Parties that arise from such breach.

**10.3.4 Good Faith Meeting.** After a request for dispute resolution has been served on all parties to the dispute in accordance with the requirements of this Article, and after compliance with the requirements of Section 10.3.7 above, representatives of each party to the dispute shall meet as soon as reasonable to attempt in good faith to resolve the dispute. If the Owner is a party to the dispute, all other Parties must be represented by a person with the authority to settle the dispute on behalf of their respective Parties. The Parties may by agreement and in good faith conduct further meetings as necessary to resolve the dispute. If resolution is not achieved, the Parties shall initiate mediation as set forth in Section 10.3.10 below.

**10.3.5 Expenses.** All expenses incurred by a Party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the Party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the Owner is a Party to the mediation, the Owner shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the Owner is named as a Party to the mediation, the Owner shall pay at least one-third of the mediation expenses and costs divided among the Parties.

**10.3.6 Mediation.**

- (i)** The Parties shall in good faith select a mediator certified in accordance with the rules of mediator certification in the Superior Court in North Carolina. If the Parties desire a mediator not so certified, the Owner's consent to such a mediator

must first be obtained in writing. If the Parties cannot agree to a mediator within a reasonable time, the Owner shall have the right to unilaterally select a certified mediator if the Owner is a party to the dispute or if the Owner is not a party to the dispute but is requested to do so by any Party to the dispute.

- (ii) Upon selection of a mediator, the Parties to the dispute shall in good faith enter into a mediation agreement that shall include terms governing the time, place, scope, and procedural rules of the mediation including those set out in paragraph (iii) below. The agreement shall also include terms governing the compensation, disqualification, and removal of the mediator. All terms of the mediation agreement must be consistent with the terms of this Article and the rest of this Contract, as well as all applicable laws. The American Arbitration Association Construction Industry Mediation Rules shall be used to the extent such rules are consistent with this Article, the Contract, and applicable law. To the extent any provision of the Rules is inconsistent with the provisions of this Article, the provisions of this Article shall control. If the parties fail to agree to a location for mediation, the mediation will be held at such location in Mecklenburg County as the mediator shall determine.
- (iii) After all reasonable good faith attempts to resolve the dispute have been made, if it appears to the mediator that the Parties are at a stalemate with no significant likelihood of reaching resolution, the mediator shall so inform the Parties and shall issue a written notice of stalemate, which shall conclude the dispute resolution process provided by this Article unless the Parties agree otherwise.

**10.3.7 Litigation.** The Parties understand and agree that mediation in accordance with this Article shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Article.

**10.4 Litigation.** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Sections 10.1, 10.2 and 10.3 above, shall be resolved in the State courts of Mecklenburg County, North Carolina.

**10.5 Duty to Continue Performance** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

#### **10.6 Consequential Damages.**

**10.6.1** Notwithstanding anything herein to the contrary (except as set forth in section 10.6.2 below), neither Design-Builder nor Owner shall be liable to the other for any consequential, special, incidental, punitive losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

**10.6.2** The consequential damages limitation set forth in Section 10.6.1 above is not intended to affect the payment of liquidated damages.

~~**10.3.6** The following disputes are not subject to mediation: (i) a dispute seeking a non-monetary recovery; and (ii) a dispute seeking a monetary recovery of \$15,000 or less.~~

~~**10.3.7** A dispute seeking the extension of any time limit set forth in an agreement to perform the Services for the Project shall be subject to mediation pursuant to this section and NCGS 143-~~

~~128(f1), but only if the damages which would be suffered by the party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.~~

~~10.3.8 For purposes of this section, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single party or two or more parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all parties to such disputes.~~

~~10.3.9 In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.~~

~~10.3.10 Prior to requesting mediation, a party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining party, unless supported by such investigation and good faith belief by the party requesting the mediation.~~

~~10.3.11 If a party breaches any provision of Section 10.3.10 of this Article, it shall indemnify and hold harmless all other parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other parties that arise from such breach.~~

~~10.3.12 All expenses incurred by a party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the Owner is named as a party to the mediation, the Owner shall pay at least one third of the mediation expenses and costs divided among the parties. If more than one party to a dispute requests a mediation, the mediation expenses and costs to be divided among the parties shall be borne equally by the parties to the dispute; provided that, if the Owner is named as a party to the mediation, the Owner shall pay at least one third of the mediation expenses and costs divided among the parties.~~

~~10.3.13 The mediation shall be held at a location agreeable to the mediator and all of the parties; provided that, if no agreement can be reached, the mediation will be held at such location in Mecklenburg County as the mediator shall determine.~~

~~10.3.14 The provisions of this section are subject to any other provision of this Agreement concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this section.~~

~~10.3.15 The parties understand and agree that mediation in accordance with this section shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this section.~~

~~10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.~~

~~10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.~~

~~10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.~~

~~10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.~~

#### **10.4 Duty to Continue Performance.**

~~10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.~~

#### **10.5 CONSEQUENTIAL DAMAGES.**

~~10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.~~

~~10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.~~

## **Article 11**

### **Stop Work and Termination**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii)

supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** ~~Owner's failure to provide financial assurances as required under Section 3.3 hereof; or~~ Reserved.

**11.3.1.2** Owner's failure to pay undisputed amounts ~~properly otherwise~~ due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within ~~seven~~ fourteen (~~7~~14) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the ~~fourteen~~ seven (~~14~~7) day cure period. If Owner does not cure the problem within such ~~fourteen~~ seven (~~14~~7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and

Contract Time(s) to the extent it has been adversely impacted by such stoppage.

#### 11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for ~~sixty-ninety (6090)~~ consecutive days, or more than ~~ninety-one hundred twenty (90120)~~ days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for ~~sixty-ninety (6090)~~ consecutive days, or more than ~~ninety-one hundred twenty (90120)~~ days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within ~~seven-thirty (70)~~ days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional ~~seven-thirty (730)~~ day period. If Owner, within such second ~~seven-thirty (730)~~ day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

#### 11.5 Bankruptcy of ~~Owner or~~ Design-Builder.

11.5.1 If ~~either Owner or~~ Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the ~~non-Bankrupt Party~~Owner, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the ~~non-Bankrupt Party~~Owner shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the ~~non-Bankrupt Party~~Owner under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the

ability of the ~~non-Bankrupt Party~~ Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **11.6 Termination for Convenience.**

**11.6.1** 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:

11.6.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

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

11.6.1.3 The amount set forth in Article 8 of the Agreement.

**11.6.2** If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. 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 of the Agreement.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article

4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the Owner or its vendors or licensors or which falls within any of the following general categories:

**13.1.1.1** Trade secrets. For purposes of this Contract, trade secrets consist of information of the Owner or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

**13.1.1.2** Information of the Owner or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."

13.1.1.3 Information relating to criminal investigations conducted by the Owner, and records of criminal intelligence information compiled by the Owner.

13.1.1.4 Information contained in the Owner's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered and/or maintained by the Owner about employees, except for that information which is a matter of public record under North Carolina law.

13.1.1.5 Citizen or employee social security numbers collected by the Owner.

13.1.1.6 Computer security information of the Owner, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.

13.1.1.7 Local tax records of the Owner that contains information about a taxpayer's income or receipts.

13.1.1.8 Any attorney / Owner privileged information disclosed by either party.

13.1.1.9 Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.

13.1.1.10 The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.

13.1.1.11 Building plans of Owner-owned buildings or structures, as well as any detailed security plans.

13.1.1.12 Billing information of customers compiled and maintained in connection with the Owner providing utility services.

13.1.1.13 Other information that is exempt from disclosure under the North Carolina public records laws.

Categories stated in Sections 13.1.1.1 through 13.1.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Design-Builder acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Design-Builder will also comply with any more restrictive instructions or written policies that may be provided by the Owner from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of the Agreement, the Confidential Information shall include information disclosed or revealed within one year prior to the date of the Agreement.

13.1.2 Restrictions. The Design-Builder shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

13.1.2.1 It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.

13.1.2.2 It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Design-Builder, other than an employee, agent, subcontractor or vendor of the Owner or Design-Builder who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the General Conditions of Contract and containing all protections set forth herein.

13.1.2.3 It shall not use any Confidential Information of the Owner for its own benefit or for the benefit of a third party, except to the extent such use is authorized by the Agreement or General Conditions of Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.

13.1.2.4 It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.

13.1.2.5 The Design-Builder shall use its best efforts to enforce the proprietary rights of the Owner and the Owner's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Article 13 of the General Conditions of Contract.

In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Design-Builder shall assert this Agreement as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the Owner or destroyed upon satisfaction of the purpose of the disclosure of such information.

13.1.3 Exceptions. The parties agree that the Design-Builder shall have no obligation with respect to any Confidential Information which the Design-Builder can establish:

13.1.3.1 Was already known to the Design-Builder prior to being disclosed by the disclosing party;

13.1.3.2 Was or becomes publicly known through no wrongful act of the Design-Builder;

13.1.3.3 Was rightfully obtained by the Design-Builder from a third party without similar restriction and without breach hereof;

13.1.3.4 Was used or disclosed by the Design-Builder with the prior written authorization of the Owner;

13.1.3.5 Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Design-Builder shall first give to the Owner notice of such requirement or request;

13.1.3.6 Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Design-Builder shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent

possible, the Agreement and General Conditions of Contract will be applicable to all disclosures under the court order or subpoena.

Unintentional Disclosure. Notwithstanding anything contained herein in to the contrary, in the event that the Design-Builder is unintentionally exposed to any Confidential Information of the Owner, the Design-Builder agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.

~~13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.~~

## **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

## **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

## **13.4 Governing Law and Venue.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the State of North Carolina~~location of the Project~~, without giving effect to its conflict of law principles.

Venue for any legal proceedings between the Parties shall be the State Courts of Mecklenburg County, North Carolina.

## **13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

## **13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### **13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

### **13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

### **13.10 E-Verify.**

**13.10.1** The Design-Builder shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

### **13.11 North Carolina Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel.**

**13.11.1** The Design-Builder certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a CMAR engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract The Design-Builder further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the Owner for any and all damages, costs and attorneys' fees incurred by the Owner in connection with any claim that this Contract or any part thereof is void due to The Design-Builder appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

### **13.12 Commercial Non-Discrimination.**

**13.12.1** As a condition of entering into this agreement, the Company represents and warrants that it will fully comply with the City's commercial non-discrimination policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of a Protected Class in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

As a condition of entering into this agreement, the Company agrees to:

- (a) Promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this agreement; and
- (b) If requested, provide to the City within sixty days after the request a truthful and complete

list of the names of all subcontractors, vendors, and suppliers that company has used on City contracts in the past five years, including the total dollar amount paid by contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's commercial non-discrimination policy as set forth in Section 2, Article V of the Charlotte City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

The Company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts or other sanctions.

For purposes of this section, "Protected Class" means a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability, as those terms are further defined in Section 2, Article V of the Charlotte City Code.

**13.12 Non-appropriation of funds.** If City Council does not appropriate the funding needed by the Owner to make payments under this Agreement for a given fiscal year, the 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, the Owner will promptly notify 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 the Owner that is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.