



DATE ISSUED: April 30, 2026

CAPE FEAR PUBLIC UTILITY AUTHORITY

REQUEST FOR QUALIFICATIONS FOR:

**A DESIGN-BUILD TEAM FOR WATER MAIN EXTENSIONS TO THE AREAS OF
BLOSSOM STREET, CHADWICK ACRES, AND CAPE LANDING**

Deadline for Inquiries

May 19, 2026 at 2:00 PM

Time and Date Set for Submittal

June 2, 2026 at 2:00 PM

REQUEST FOR QUALIFICATIONS (RFQ)
FOR
DESIGN-BUILD SERVICES

**WATER MAIN EXTENSIONS TO THE AREAS OF BLOSSOM STREET, CHADWICK
ACRES, AND CAPE LANDING**

INFORMATION AND INSTRUCTIONS TO DESIGN-BUILDERS

1 - GENERAL INFORMATION

Cape Fear Public Utility Authority (“CFPUA”) intends to procure a qualified Design-Builder (“DB”) to provide design and construction services for the installation of water main extensions into existing neighborhoods in the areas of Blossom Street, Chadwick Acres, and Cape Landing. (“Project”) This installation will include the public and private-side water service connections.

- 1.1** Sealed Statement of Qualifications (“SOQ”) must be received by the Finance Department at 235 Government Center Drive, Wilmington, NC 28403 no later than June 2, 2026 at 2:00 PM.
- 1.2** CFPUA will address questions regarding the RFQ until 2:00 PM on May 19, 2026. Questions submitted after this time will not be addressed. Questions should be directed to Ben Guerrieri, Procurement Manager, Cape Fear Public Utility Authority, at bids@cfpua.org.
- 1.3** CFPUA will not be held responsible for any oral instructions. Any changes to this RFQ will be in the form of an addendum, which will be furnished to all registered RFQ holders. Please register by sending company name and contact information to bids@cfpua.org.
- 1.4** CFPUA reserves the right to reject any or all SOQs, to waive any informality or irregularity in any SOQ received, and to be the sole judge of the merits of the respective SOQs received.
- 1.5** Project Description: The proposed Blossom Street, Chadwick Acres, and Cape Landing area water main extensions are a continuation of CFPUA’s ongoing efforts to provide public drinking water service connections and main extensions to unserved homes and communities in New Hanover County impacted by PFAS.

These water main extensions will be primarily funded via Division of Water Infrastructure (“DWI”) Emerging Contaminants Small and Disadvantaged Communities (“EC-SDC”) grants.

This Project will include design, obtaining of permits, creation of engineering reports (preparation, submission, and DWI approval), public outreach assistance, construction



phase engineering services, and ultimately the construction of water main extensions into existing neighborhoods impacted by PFAS. The selected DB will form a team with CFPUA (“Project Team”) and execute preliminary and final comprehensive agreements for design and construction for a total Project cost not to exceed the approved budget amount. This Project will receive funding as outlined herein.

As the Blossom Street, Chadwick Acres, and Cape Landing phases of the Project are being funded through separate grants, each phase of the Project, including pricing and invoicing for each of the three benefited areas, shall be kept separate.

- Total Estimated Design-Build Project Budget for Blossom Street Area Water Extension: \$2,259,003
- Total Estimated Design-Build Project Budget for Chadwick Acres Area Water Extension: \$2,547,784
- Total Estimated Design-Build Project Budget for Cape Landing Area Water Extension: \$ \$2,386,924

Anticipated Project Schedules:

Item	Task	*Anticipated Date
1	Advertise Design Build RFQ for Design Build Teams	April 30, 2026
2	Receive Design Build SOQs for Design Build Teams	June 2, 2026 by 2:00 PM
3	Design Build Team Selection & Notification	June 16, 2026
4	Execute Preliminary Design Build Agreement DBIA 520	August 12, 2026
*5	Design Build Team Obtains DWI Approval of Engineering Reports	November 10, 2026
6	Design Team Develops 60% Drawings and Specifications	May 7, 2027
7	Permitting/DWI Submittal Approval	July 6, 2027
8	Execute Construction Contract	August 11, 2027

**The funding for this Project is contingent on receipt of DWI approval of the engineering reports.*

- 1.6 The DB will be selected based on qualifications as outlined in Section 3 of this RFQ.
- 1.7 The Design Build services will be performed under the terms and conditions of Design Build Institute of America (“DBIA”) contract documents with one entity identified as the



DB. CFPUA standard terms and conditions are attached as Exhibit E. Services will include all necessary activities to design and construct the Project.

- 1.8** The DB will be an integral member of the Project Team, consisting of the DB, representatives from CFPUA, and other consultants as required. DB, utilizing skills and knowledge of design and general contracting, is responsible for a) integrating the design and construction phases, b) providing design, code analysis, value engineering and constructability reviews, c) developing schedules, d) preparing detailed Project construction estimates, e) studying labor conditions, and, , f) contributing to the development of the Project in any other way deemed necessary during the pre-construction/design phase.
- 1.9** The DB assumes design and construction risk and has direct authority over the sub-consultants and subcontractors. The DB will act as the CFPUA's fiduciary and will maintain a relationship of trust and confidence between itself and CFPUA. CFPUA will enter into a Preliminary Design-Build Agreement with the selected DB utilizing DBIA form 520 (Exhibit E). Upon completion of the preliminary design-build scope of work, CFPUA will develop a Lump Sum agreement with the selected DB for the Project utilizing DBIA form 525 and 535 (Exhibit E). The Project will be an "open book" job whereby CFPUA may attend any and all meetings of the DB firm relating to the Project and have access to any and all books and records of the DB relating to the Project.
- 1.10** CFPUA is currently evaluating additional funding options for this Project. As federal funds are being utilized, all federal Uniform Guidance requirements will apply in addition to all applicable State requirements. These terms and conditions can be found at the end of this solicitation. CFPUA is aware that federal requirements and state requirements may be in conflict, however in the absence of guidance for these conflicts the standard State requirements will remain within the terms and conditions of the Project documents. Additionally, based on funding sources, M/WBE outreach goals may differ from CFPUA's standard goals. Compliance Supplement can be found here:

<https://www.deq.nc.gov/about/divisions/water-infrastructure/i-have-funding/design-bid>

2- ANTICIPATED SCOPE OF WORK

2.1 The scope of work will be generally delivered in a two-phased Progressive Design-Build approach as described below.

- Phase 1 – Design and Pre-Construction Services: The scope of work for Phase 1 will be negotiated on a lump sum basis and will require approval by CFPUA. During this phase, the scope of work will include overall Project scoping, public outreach assistance, creation of engineering reports (including preparation, submission, and obtaining DWI approvals), assistance with grant administration, design meetings, development of an initial opinion of cost, design services through a 30% submittal package (with cost

opinion update), and design completion to 60% or greater (with cost opinion update) as well as the preparation and delivery of a lump sum cost and schedule for Phase 2.

Completion of the design and pre-construction services associated with the Phase 1 contract will be contingent on DB gaining approval of the required engineering reports during preliminary design. This Project has received Conditional Letters of Intent to Fund from DWI, however formal funding offers will not be issued until the engineering reports have been approved. If DWI does not approve the engineering report(s) due to the acts or omissions of DB, CFPUA will have the right to terminate the agreement for cause and without penalty. Funding is additionally contingent upon 90% of the homeowners identified in the respective grant applications committing to connecting to the proposed water systems prior to submission of the engineering reports. DB will be expected to assist CFPUA with the public outreach effort as part of the scope of the Phase 1 agreement. Completion of Phase 1 is required before commencement of activities in Phase 2.

Following receipt and acceptance of the formal funding offers, CFPUA will work with DB to finalize the terms of the Design-Builder Agreement for Phase 2. DB will only be authorized to proceed with Phase 2 upon negotiation and execution of an agreement for Phase 2 including Project scope, schedule, contract terms, and lump sum cost as well as all other standard terms and conditions and any terms and conditions specific to this Project. CFPUA must be able to demonstrate that execution of the Phase 2 work is cost-effective, allows for local sub-contractor competition, achieves schedule milestones, and meets the needs of CFPUA. If a Phase 2 agreement is not reached, then CFPUA will have no further contractual responsibility to DB and may seek alternatives to Project completion.

- Phase 2 – Design-Build Services Agreement: Phase 2 Design-Build work will include completion of design services, continued grant administration assistance, construction, and final Project completion as outlined in the Design-Build Agreement.

2.2 In general, the Project scope of work includes design and construction for the following key elements:

- All necessary professional engineering and construction services for the installation of grant-funded public water main extensions into existing neighborhoods in the areas of Blossom Street, Chadwick Acres, and Cape Landing including the public and private-side water service connections.
- Exhibits A, B, and C to this RFQ provide vicinity maps showing the general Project areas.

2.3 After being selected, the DB will execute preliminary and final comprehensive agreements with CFPUA as previously outlined to provide design, permitting, and construction services of the Project including, but not limited to:



- Providing Project management and administration through Project leadership and overall Project Team coordination;
- Planning and designing the Project and preparing forms and reports required by the funding agency(ies) (i.e. Engineering Report/Environmental Information Document (ER/EID)), as well as obtaining permitting, etc. for water main and service installations in accordance with applicable technical standards and administrative requirements of CFPUA, New Hanover County, City of Wilmington, NCDOT, DWI, NC Building Code, etc. **Experience with water distribution projects in an active urban environment is required;**
- Assisting with CFPUA's public outreach efforts;
- Completing all preliminary through final design engineering efforts for the Project with design document submittals at 30%, 60%, 90%, and 100%;
- Developing an initial opinion of cost and then updating that cost opinion during design development with submittals at the 30% design stage, 60% design stage and final lump sum. An updated cost opinion will be maintained throughout Phase 1 efforts. Demonstrated capacity to accurately estimate project costs and effectively deliver projects of this nature on time and within budget is relevant to the selection process;
- Completing all surveying, SUE, and geotechnical engineering required for successful design and construction and development of construction pricing;
- Providing all construction management services related to the scope of work;
- Completing Project close-out activities including final punch-lists, Project certifications, and warranty efforts;
- Ensuring compliance with all applicable requirements as set forth by the funding agency(ies); and
- Assuming the risk of delivering the Project and bearing the responsibility for construction means and methods.

3 - STATEMENT OF QUALIFICATIONS SELECTION CRITERIA

3.1 Firms interested in providing design build services must submit:

- a. An SOQ that addresses the evaluation criteria included in this Section 3. Applicants are encouraged to organize their submissions in such a way as to follow the general evaluation criteria contained within this RFQ. Information included within the SOQ may be used to evaluate DB as part of any criteria regardless of where that information is found within the SOQ. Information obtained from the SOQ and



from any other relevant source may be used in the evaluation and selection process;
and

- b. A Cover Letter limited to one page and containing at a minimum:

Company name, contact name, address, fax number, and email address

3.2 Qualifications Criteria

CFPUA will utilize a rating system to score and rank each proposal; CFPUA will use these rankings to develop a shortlist. DBs are encouraged to keep proposals concise and to include a minimum of marketing materials. Each proposal must address the following criteria:

Item	Evaluation Criteria	Maximum Points
1	(A) General Information & (B) Relevant Firm Experience	30
2	Team Experience and Qualifications	30
3	Project Understanding and Approach	30
4	Other Factors	5
5	<u>MBE, WBE, SBE, DBE and Small Business Participation Outreach Plan</u>	5
6	Inclusion of Price Factors	Pass/Fail
7	Financial & Legal	Pass/Fail
Total Possible Points		100

Evaluation Criteria 1(A) - General Information

- a. Description of firm/team
- b. Legal company organization including an organizational chart with names. The organizational chart will also include major subcontractors and will name authorized signatories for DB.
- c. Identification of the Project Manager for DB who will be assigned to this Project.
- d. List of applicable North Carolina licenses for construction, engineering, or other trades/professions pertinent to the Project requirements.
- e. Explanation of Project Team selection consisting of one of the following team selection options:
 - a. A list of the licensed contractors, licensed subcontractors, and design professionals whom DB proposes to use for the Project's design and construction. If this Project Team selection option is used, DB may self-perform some or all of the work with employees of DB and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with subcontractors, including, but not exclusively with, those identified in



the list. In submitting its list, DB may, but is not required to, include one or more unlicensed subcontractor DB proposes to use. If this Project Team selection option is used, DB may, at its election and with or without the use of negotiated subcontracts, accept bids for the selection of one or more of its first-tier subcontractors; or

- b. A list of the licensed contractors and design professionals whom DB proposes to use for the Project's design and construction and an outline of the strategy DB plans to use for open subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes. If this Project Team selection option is used, DB may also self-perform some of the work with employees of DB, but shall not enter into negotiated contracts with first-tier subcontractors.

Evaluation Criteria 1(B) - Relevant Firm Experience and References

- a. DB's service capabilities and quality as it relates to this Project;
- b. A list and brief description of 3 comparable projects completed by DB or currently in progress; this list will include DB's role and will discuss any applicable contract amendment history. For each project, this list will include contract value and construction value (original value plus contract amendments, if applicable), project owner, project location, contact name and title, address, current and accurate telephone number, and email address (if available);
- c. A minimum of three referrals and references from other agencies and owners. If possible, references should be from the projects listed above; and
- d. A calculation of the type and amount of total self-performed work that was completed (for completed projects) or is anticipated (for on-going projects).

Evaluation Criteria 2 - Team Experience and Qualifications

- a. Description of each team member's position within DB. This description will include resumes of each proposed Project Team member and will be attached to the SOQ as Appendix A;
- b. Brief description of each team member's role on this Project;
- c. Description of the proposed team's experience working together on similar projects;
- d. Explanation of DB's understanding of and experience with the Progressive Design-Build Delivery Method;



- e. Any available information regarding teaming history and the working relationship between DB and DB's consulting engineering firm(s);
- f. Any available information regarding teaming history and the working relationship between DB and any proposed major construction subcontractor(s); and
- g. Explanation of DB team's current workload and ability to proceed promptly with the Project. Explanation will include a statement with assurances that the Project Team has the necessary resources available to complete this Project within the schedule provided in this RFQ.

Evaluation Criteria 3 - Project Understanding and Approach

- a. Description of DB's understanding of the Project;
- b. Description of DB's planning, scheduling, estimating, and construction management tools;
- c. Description of DB's quality control plan during design and construction;
- d. Identification and discussion of any potential problems during design and construction;
- e. Identification and discussion of methods DB will use to mitigate those problems identified in d;
- f. Description of work anticipated to be self-performed, and work anticipated to be performed by sub-consultants/subcontractors;
- g. An anticipated Project schedule with ideas to accelerate the overall duration;
- h. Description of the approach DB will use to minimize disruption and inconvenience to the residents of existing neighborhoods and the general public; and
- i. Description of the approach DB will use to conduct public outreach and communicate with residents impacted by the work.

Evaluation Criteria 4 – Other Factors

- a. Description of the approach DB will use for safety management;
- b. Documentation verifying that DB has an acceptable safety record, including Experience Modification Rate ("EMR") for the last three years. DBs should not submit full safety plans but rather limit documentation to DB's approach to safety management;



- c. A statement of assurances that entering into an agreement to perform the scope of work for this Project will not result in a conflict of interest; and
- d. Description of any relevant factors impacting the quality and value of work to be performed for this Project.

Evaluation Criteria 5 - MBE, WBE, SBE, DBE and Small Business Participation Outreach Plan

- a. Description of DB’s approach to MBE, WBE, SBE, DBE, and Small Business Participation Outreach Plan;
- b. Description of how DB will comply with the Federal requirements as per 2 C.F.R. § 200.321, as applicable; and
- c. MBE/WBE (DBE) Compliance Supplement which can be found here:

<https://www.deq.nc.gov/about/divisions/water-infrastructure/i-have-funding/design-bid>

Evaluation Criteria 6 –Inclusion of Price Factors

No points will be allocated for Evaluation Criteria No. 6; DBs will be rated as acceptable (pass) or unacceptable (fail). Price factors will be negotiated following selection of DB.

- a. Per S.L. 2021-189, Section 1.6, CFPUA is requesting price factors. Please provide all of the information necessary to complete the following table with your SOQ.

*Price Factors Form (Include in SOQ)	
Design-Builder’s Fee (%) for Phase 2 Services – as defined in DBIA Standard Document 525	%
Design-Builder’s Fee (%) for additive Change Orders as defined in DBIA Standard Document 525	%
Design-Builder’s estimated amount of self-performed work as a percentage of the total contract value	%
DB’s 2026 Rate Table for Key Personnel	\$/hr.
<i>Construction Staff</i>	



<i>Design Staff</i>	
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**Selecting a Design-Build team does not obligate CFPUA to the proposed Price Factors provided by the Design-Build team. These fees and rates will be evaluated during the scoping phase.*

Evaluation Criteria 7 – Financial & Legal

No points will be allocated for Evaluation Criteria No. 7; DBs will be rated as acceptable (pass) or unacceptable (fail)

- a. Upon Selection DB will be required to provide a Performance and Payment Bond in the full amount of the Design-Build Agreement. For this SOQ, DB will provide evidence of ability to provide and maintain the following:
 - i. A Performance and Payment Bond in the amount of at least \$3M;
 - ii. General Liability Insurance at \$3M per occurrence and \$5M aggregate;
 - iii. Umbrella Liability Insurance at \$5M per occurrence;
 - iv. Workman’s Compensation Insurance at \$500,000 per occurrence for both Disease and Accident; and
 - v. Professional Liability Insurance at \$2M per occurrence.
- b. List and description of any litigation, arbitration, claims filed by DB against any project owner as a result of a contract dispute, claims filed against DB as a result of a contract dispute or for any other reason, and any instance of DB having been terminated from a project.

4 - SUBMITTAL REQUIREMENTS

- 4.1 The SOQ will include a one-page cover letter plus a maximum of fifty (50) 8.5”x11” pages to address the SOQ criteria specified in Section 3 (excluding Resumes and Sub-consultant/Subcontractor Selection Plan). 11”x17” pages may be used, but one 11”x17” page will count as two 8.5”x11” pages. Tables of Content and section divider pages do not count toward the total page count. Resumes for each key team member will be limited to no more than two pages. Resumes and Sub-consultant/Subcontractor Selection Plan will be attached to the SOQ as Appendix A.
- 4.2 DB will submit Five (5) hard copies to Procurement Manager, 235 Government Center Drive, Wilmington, NC 28403 no later than 2:00 PM EST on June 2, 2026. SOQs will be enclosed in an opaque sealed package plainly marked on the outside with the notation “SOQ ENCLOSED.” When using the United States Postal Service or any other delivery service, DB is solely responsible for the USPS or other delivery service delivering the SOQ to



Procurement Manager, 235 Government Center Drive, Wilmington, NC 28403 no later than 2:00 PM EST on June 2, 2026.

- 4.3 **DB will also submit an electronic copy of the SOQ in .pdf format to bids@cfpua.org no later than 2:00 PM EST on June 2, 2026.** Maximum file size for .pdf submission is 25MB. A reply will be sent to the email address submitting the SOQ only to confirm receipt. It is DB's responsibility to confirm that CFPUA has received an electronic copy of the SOQ via email. If email reply is not received from bids@cfpua.org, please call 910-332-6472 or 910-332-6651 before the deadline for submission.
- 4.4 Failure to comply with the following criteria may be grounds for disqualifications:
- a. Receipt of SOQ by the specified cut-off date and time.
 - b. A number of originals and/or copies of the SOQ not in compliance with the number specified in this RFQ.
- 4.5 Adherence to the maximum page criteria is critical; each page side (maximum 8.5" x 11") with criteria information will be counted. Pages that have photos, charts and graphs will all be counted toward the maximum number of pages.
- 4.6 Submitted information will comply with N.C.G.S. 143-64.31 through 64.34 (aka Mini Brooks Act).
- 4.7 An Anti-Lobbying Certificate is attached as Exhibit D to this RFQ and must be submitted with the SOQ.

5- SELECTION PROCESS AND SCHEDULE

- 5.1 A Project Evaluation Team ("PET") will evaluate each SOQ according to the criteria defined within this RFQ. No oral interviews are planned in this first step of the selection process. Following a review of the submittals, PET will select DB and post results. DBs not selected for further consideration will be notified.
- 5.2 The following tentative schedule has been prepared for this Project. DBs interested in this Project must be available on the interview meeting date if requested.
- a. SOQs due: June 2, 2026 by 2:00PM
 - b. Interview date: TBD if requested
 - c. Notification of Selected DB: June 16, 2026
- 5.3 CFPUA will negotiate with the selected DB using CFPUA's standard form Design-Build Contract (DBIA Standard Documents with appropriate modifications agreed upon by both parties). If DB is unwilling to execute CFPUA's standard form Design-Build Contract or the selected DB fails to execute CFPUA's standard form Design-Build Contract within two weeks of notification of selection, CFPUA may then negotiate with the second or third highest ranked firm until a contract is executed, or CFPUA may decide in its sole discretion



to terminate the selection process. If CFPUA does not receive an acceptable price proposal for Phase 1 services, CFPUA may decide in its sole discretion to terminate the selection process.

6 - REFERENCE DOCUMENTS

- Exhibit A – Proposed Blossom Street Area Water Main Extensions
- Exhibit B – Proposed Chadwick Acres Area Water Main Extensions
- Exhibit C – Proposed Cape Landing Area Water Main Extensions
- Exhibit D – Anti-Lobbying Certificate
- Exhibit E - DBIA 520 Preliminary Agreement
DBIA 525 Lump Sum Agreement
DBIA 535 General Conditions of Contract

SECTIONS 7-11 NOT USED

12 – FEDERAL REQUIREMENTS

12.1 Equal Employment Opportunity

12.1.1 As the Contract is a Federally Assisted Construction Contract exceeding \$10,000, during the performance of this Contract, any Design Builder selected shall be subject to the following conditions:

12.1.1.1 Design Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Design Builder will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

12.1.1.2 Design Builder will, in all solicitations or advertisements for employees placed by or on behalf of Design Builder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

12.1.1.3 Design Builder will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or



action, including an investigation conducted by the employer, or is consistent with Design Builder's legal duty to furnish information.

12.1.1.4 Design Builder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Design Builder's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.1.1.5 Design Builder will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.1.1.6 Design Builder will furnish to the Administering Agency and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

12.1.1.7 In the event of Design Builder's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Design Builder may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed, and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.1.1.8 Design Builder will include the portion of the sentence immediately preceding paragraph A.1. of this Section II and the provisions of paragraphs A.1. through A.7. in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Design Builder will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event Design Builder becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Design Builder may request the United States to enter into such litigation to protect the interests of the United States.

Since the parties to the Contract are local government agencies, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

12.1.1.9 Owner agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Design Builder and any Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require



for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.

12.1.1.10 Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, with a Design Builder debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Design Builder and any Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Owner agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

12.2 Copeland "Anti-Kickback" Act

The Design Builder and any Subcontractors performing work under the Contract shall comply with 18 U.S.C. § 874. All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the with the Copeland "Anti- Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Sub-contractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Design Builder or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Owner shall report all suspected or reported violations to Treasury.

12.3 Davis-Bacon Act

All suppliers, Design Builders, subcontractors, consultants, and sub-consultants must comply with Davis-Bacon Act, as amended (40 U.S.C. 3141–3148).When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

12.4 Contract Work Hours and Safety Standards Act

12.4.1 Overtime Requirements. No Design Builder or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.



12.4.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in 12.4.1 (Overtime Requirements), above, Design Builder and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Design Builder and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in 12.4.1 (Overtime Requirements), above, in the sum of \$33 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 12.4.1 (Overtime Requirements), above.

12.4.3 Withholding for Unpaid Wages and Liquidated Damages. Owner shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold, or cause to be withheld, from any monies payable on account of work performed by Design Builder or Subcontractor under any such contract or any other federal contract with the same prime Design Builder, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Design Builder, such sums as may be determined to be necessary to satisfy any liabilities of Design Builder or Subcontractor for unpaid wages and liquidated damages as provided in 12.4.2 (Violation; Liability for Unpaid Wages; Liquidated Damages) of this section.

12.4.4 Subcontracts. The Design Builder or Subcontractor shall insert in any subcontract the clauses set forth in 12.4.1 through 12.4.4 and a clause requiring Subcontractors to include these clauses in any lower-tier Subcontracts. Design Builder shall be responsible for compliance by any first-tier Subcontractor or lower-tier Subcontractor with the clauses set forth in 12.4.1 through 12.4.4.

12.4.5 Payroll and Records. Design Builder or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and last known address, telephone number, and email address of each such employee, Social Security number, correct classification(s) of work actually performed, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Design Builder or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Design Builder or Subcontractor will permit such representatives to interview employees during working hours on the job.

12.4.6 Exceptions. None of the requirements of Article 12 of this Contract shall apply if the Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

12.5 Rights to Inventions Made Under a Contract or Contract

12.5.1 The Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means



use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.

12.5.2 Unless otherwise provided by law, suppliers, Design Builders, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, Design Builders, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

12.5.3 Unless prohibited by North Carolina law, upon request by the Government, Owner will require the Design Builder to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Design Builder of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Design Builder shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Design Builder.

12.5.4 Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

12.6 Clean Air Act and Federal Water Pollution Control Act

12.6.1 Clean Air Act. Owner agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The selected Design Builder shall report each violation to Owner and Owner will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office. The Design Builder shall include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

12.6.2 Federal Water Pollution Control Act. Owner agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The selected Design Builder shall report each violation to Owner and Owner will, in turn, report each violation as required to assure notification to Treasury and the appropriate Environmental Protection Agency Regional Office. The Design Builder shall include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

12.7 Debarment and Suspension

12.7.1 Due to its receipt of Fiscal Recovery Funds, Owner is a participant in a non-procurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, the Contract is a lower-tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).



12.7.2 If this Contract is a covered transaction as set forth in Section VIII.A., above, Design Builder shall certify as of the date of execution of the Contract that Design Builder, Design Builder's principals (defined at 2 C.F.R. § 180.995), and any affiliates (defined at 2 C.F.R. § 180.905) of both Design Builder and Design Builder's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) the Contract shall be void, (2) Owner shall not make any payments of federal financial assistance to Design Builder, and (3) Owner shall have no obligations to Design Builder under the Contract.

12.7.3 The Design Builder must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-tier covered transaction into which it enters. This certification is a material representation of fact relied upon by Owner and all liability arising from an erroneous representation shall be borne solely by the Design Builder.

12.7.4 If it is later determined that the Design Builder did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Owner the Government may pursue available remedies, including but not limited to suspension and/or debarment.

12.8 Byrd Anti-Lobbying Amendment

12.8.1 The Design Builder shall certify to Owner and shall cause each tier below it to certify to the tier directly above such tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. The selected Design Builder shall, and shall cause each tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from tier to tier up to the Owner, which will, in turn, forward the certification(s) to Treasury. Design Builder shall cause the language of this 12.8.1 to be included in all Subcontracts. This certification is a material representation of fact upon which Owner has relied when entering into the Contract, and all liability arising from an erroneous representation shall be borne solely by the Design Builder.

12.8.2 Any Design Builder that bids or applies for a contract exceeding \$100,000 (including the Contract, if applicable) also must file with Owner the certification in Attachment 1 to this Contract, which is attached hereto and incorporated herein.

12.8.3 Any Subcontractor to the Contract with a Subcontract (at any tier) exceeding \$100,000 shall file with the tier above it the certification in Attachment 1 to this Contract, which is attached hereto and incorporated herein.

12.9 Procurement of Recovered Materials

12.9.1 12.9.2 shall apply if (1) the Contract involves the purchase of an item designated by the Environmental Protection Agency ("EPA") in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Owner's preceding fiscal year exceeded \$10,000.



12.9.2 All suppliers, Design Builders, and subcontractors, consultants, sub-consultants must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

12.9.3 All suppliers, Design Builders, and subcontractors, consultants, sub-consultants should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

12.10 Domestic Preferences for Procurements

12.10.1 For purposes of 12.10, the terms below are defined as follows:

12.10.1.1 "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.

12.10.1.2 "Manufactured Products" means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12.10.2 The selected Design Builder should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials Produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other Manufactured Products. The Design Builder shall cause any Subcontractors to include the requirements of 12.10 in any Subcontracts.

12.10.3 Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

12.11 Solicitation of Minority and Women-Owned Business Enterprises

12.11.1 If the selected Design Builder intends to let any Subcontracts, Owner shall require that the Design Builder (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business



Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

12.11.2 For the purposes of Section 12.11, an entity shall qualify (1) as a “minority business” or “women’s business enterprise” if it is currently certified as a North Carolina “historically underutilized business” under Chapter 143, Section 128.4(a) of the N.C. General Statutes (hereinafter G.S.), and (2) as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

12.12 Access to Records

12.12.1 Owner, the selected Design Builder, and the parties to the Contract will provide the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Design Builder which are directly pertinent to this Contract to conduct audits or any other investigations. Any of the foregoing parties may reproduce such records by any means whatsoever or copy excerpts and transcriptions as reasonably needed.

12.12.2 Owner agrees to retain all records covered by 12.12 through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract.

12.13 Conflicts of Interest; Gifts and Favors

12.13.1 Owner will use Fiscal Recovery Funds to pay for the cost of this Contract and (2) the expenditure of Fiscal Recovery Funds is governed by the Owner’s Conflict of Interest Policy, any Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, N.C.G.S. §§14-234(a)(1) and -234.3(a)).

12.13.2 The selected Design Builder shall certify to Owner that as of the date of execution of the Contract, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Owner or any party to the Contract involved in the selection, award, or administration of the Contract (each a “Covered Individual”); no member of a Covered Individual’s immediate family; no partner of a Covered Individual; and no organization (including Design Builder) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Design Builder. Should the Design Builder obtain knowledge of any such interest, or any tangible personal benefit described in the preceding sentence after the date thereof, Design Builder shall promptly disclose the same to Owner in writing.

12.13.3 The selected Design Builder shall certify to Owner that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Owner. Should the Design Builder obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date thereof, Design Builder shall promptly disclose the same to Owner in writing.

12.14 Assurances of Compliance with Title VI of the Civil Rights Act of 1964

12.14.1 The selected Design Builder and any Subcontractor, or the successor, transferee, or assignee of the Design Builder or any Subcontractor, shall comply with Title VI of the

Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

12.15 Other Non-Discrimination Statutes

12.15.1 Owner is bound by and agrees, to the extent applicable to the selected Design Builder, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

12.5.1.1 The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

12.15.1.2 Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

12.15.1.3 The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

12.15.1.4 Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

12.16 Miscellaneous

12.16.1 *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Owner shall encourage the selected Design Builder to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

12.16.2 *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Owner shall encourage the selected Design Builder to adopt and enforce policies that ban text messaging while driving.

12.16.3 *Drug-Free Workplace Regulations.* All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.

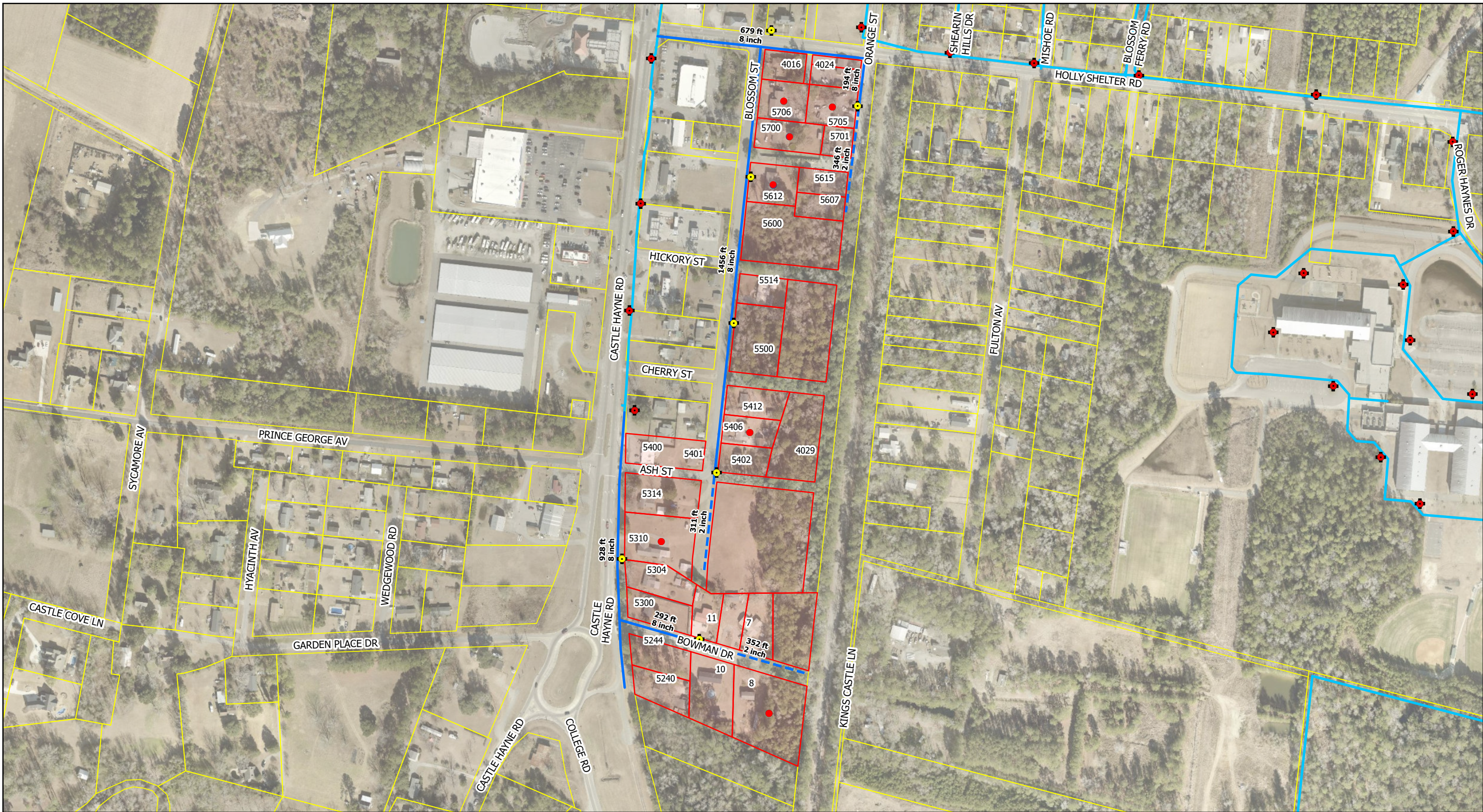
12.16.4 *Whistleblower Protection Act.* An employee of Design Builder or any supplier, contractor, subcontractor, consultant, or sub-consultant must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes



is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

12.16.4 Hatch Act. All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12.16.5 Telecommunications Huawei / ZTE Ban. 2 C.F.R. 200.216 prohibits non-federal entities receiving federal grant funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system from the Chinese manufacturers Huawei and ZTE.



Proposed Water Mains

- 2 inch (1,009 ft)
- 8 inch (3,549 ft)
- Existing Water Main
- ⬢ Proposed Hydrants (7)
- ⬢ Existing Hydrants

- Proposed Water Service connection to Include Private-Side Installation (7)
- Project Parcels (32)
- Parcels

Exhibit A - Proposed Blossom Street Area Water Main Extensions



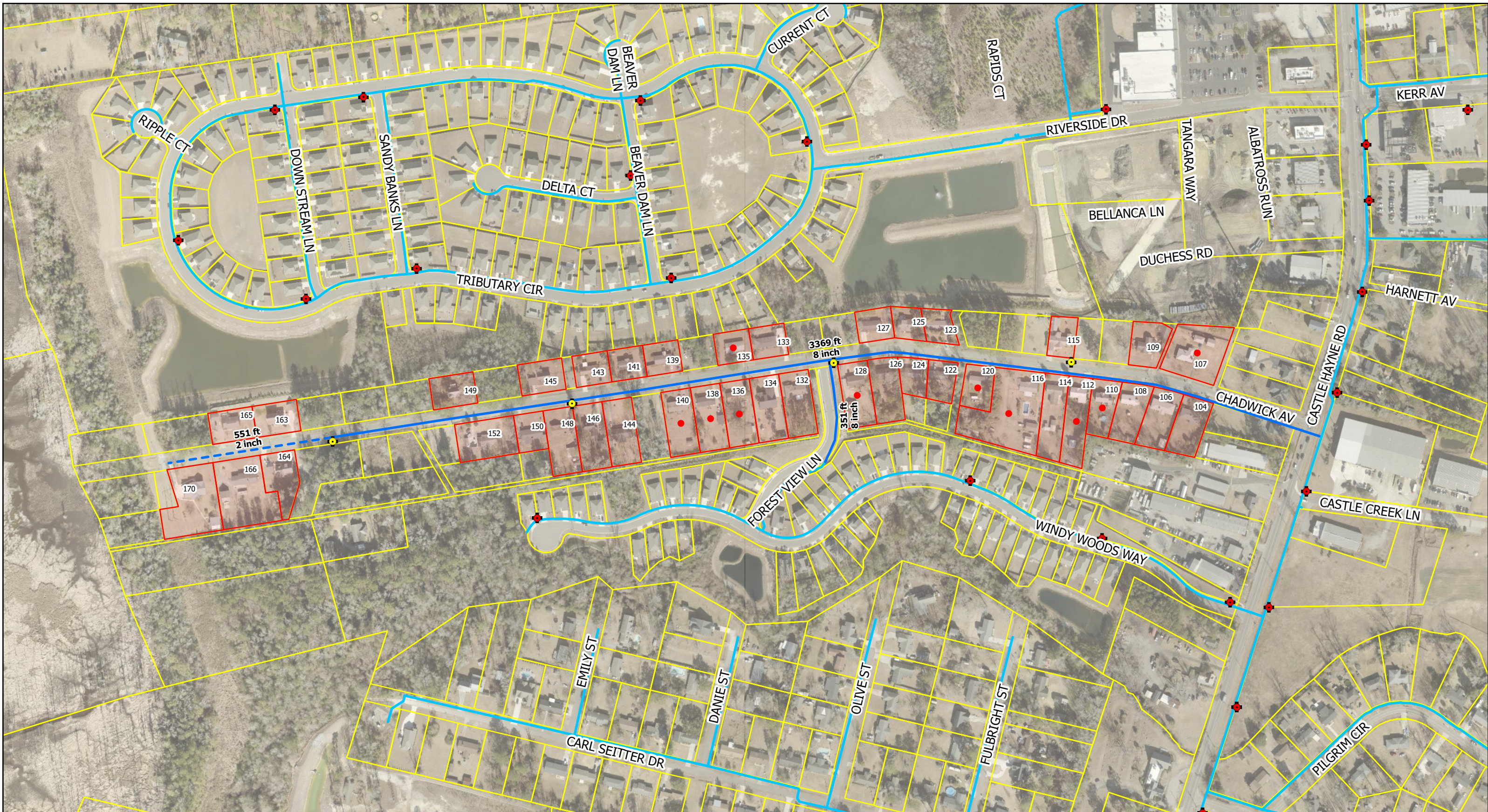
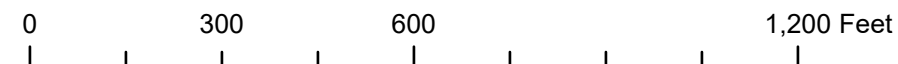


Exhibit B: Proposed Chadwick Acres Area Water Main Extensions

- Proposed Water Mains**
- 2 inch (551 ft)
 - 8 inch (3,720 ft)
 - Existing Water Mains
 - Existing Hydrants
 - Proposed Hydrants (4)

- Proposed Water Service connection to Include Private-Side Installation (10)
- Project Parcels
- Parcels



Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with qualifications statement)

The undersigned [Design Builder] certifies, to the best of his or her knowledge, 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 any 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 influencing or attempting to influence an officer or employee of any 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including 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 this transaction imposed by section 1352, title 31, U.S. Code. 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 Design Builder, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Engineer understands and agrees that the provisions of 31 U.S.C.Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Design Builder's Authorized Official

Name and Title of Design Builder's Authorized Official

Date

Exhibit E



STANDARD FORM OF PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 520

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



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. Acknowledgement.** 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 North Carolina ~~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. 520 Standard Form of Preliminary Agreement Between Owner and Design-Builder (2010 Edition)

Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.7	Attach exhibit for Additional Services (optional)
_____	Section 4.2.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.1	Complete blanks for calendar days
_____	Section 5.2	Attach exhibit for interim milestone dates (optional)
_____	Section 6.1	Insert the Contract Price
_____	Section 7.1	Insert the payment method
_____	Section 7.2	Complete blanks for interest rate
_____	Section 9.8	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

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.
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 prohibited.

No.	Subject	Instruction
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. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term.</p> <p>Any modifications to these Documents should be underlined to distinguish them from original language. Any modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. 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>DBIA Document No. 520, <i>Standard Form of Preliminary Agreement Between Owner and Design-Builder</i> ("Agreement") is for preliminary services only, not for construction services, and shall be used when Owner decides not to contract for the complete design and construction at one time. Use of this Agreement anticipates a two-stage approach to the Project, whereby Owner retains the Design-Builder to assist in the review and/or development of Owner's Project Criteria and for preliminary Schematic Design Documents. Then, depending upon the Design-Builder's Proposal, Owner has the option of contracting for final design and construction services by executing either DBIA Document No. 525, <i>Standard Form of Agreement Between Owner and Design-Builder – Lump Sum</i>, 2010 Edition, or DBIA Document No. 530, <i>Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price</i>, 2010 Edition. DBIA Document No. 525 and DBIA Document No. 530 can also be used when Owner desires preliminary services as part of a complete design-build contract.</p> <p>Under this Agreement, Design-Builder provides a Schematic Design and a Proposal for the completion of the design and construction. If Owner has not completed its Project Criteria before executing this Agreement, the Agreement allows for Owner to pay Design-Builder to assist in the development of Owner's Project Criteria as an Additional Service.</p> <p>If Owner does not accept the Proposal Design-Builder prepares under this Agreement, Owner may select another design-builder to complete the final design and construction. This Agreement allows Owner a limited license to use the Schematic Design and other Work Product created by Design-Builder under this Agreement to complete the Project, providing that Owner indemnifies Design-Builder for claims arising out of the use of the Work Product, and further agrees to compensate Design-Builder for the use of its Work Product. It is anticipated that Owner and Design-Builder will negotiate the compensation for the use of the Work Product prior to the execution of this Agreement.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.

Section	Title	Instruction
General	Related Documents	<p>This Agreement includes its own abbreviated general conditions and does not require the use of DBIA Document No. 535, <i>Standard Form of General Conditions of Contract Between Owner and Design-Builder</i>, 2010 Edition (“General Conditions of Contract”).</p> <p>Upon completion of the services under this Agreement, the parties may complete the final design and construction of the Project by executing either DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>
General	Date	<p>On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.</p>
General	Parties: Owner and Design-Builder	<p>On Page 1, enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.</p>
1.2	Definitions	<p>Although this Agreement is a stand-alone document, terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.</p>
2.1	Design Services	<p>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.</p>
2.2	Preliminary Services	<p>If Owner’s Project Criteria are provided, Design-Builder’s review and written evaluation of the Project Criteria will promote a clear understanding of Owner’s program prior to Design-Builder’s preparation of Schematic Design Documents.</p> <p>This Agreement acknowledges that Owner may not have developed its Project Criteria prior to the execution of this Agreement, and provides that Owner may pay Design-Builder an additional fee to assist in this effort pursuant to Section 2.7, Additional Services.</p>
2.4	Proposal	<p>Upon completion of the Schematic Design Documents, Design-Builder shall prepare its Proposal, which shall contain the information described in Sections 2.4.1, 2.4.2, 2.4.3, and 2.4.4. If the parties agree to additional or other requirements, state these requirements in Section 9.8, Other Provisions, or modify Section 2.4 appropriately.</p>
2.4.2	Schedule	<p>Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required and any Owner created constraints.</p>
2.4.3	Other information	<p>Other information may be required to enter into a subsequent agreement for final design and construction. For example, if a Guaranteed Maximum Price (“GMP”) is proposed, Design-Builder will need to provide all documents used as the basis for the GMP and identify them in a GMP Exhibit. For a Lump Sum proposal, Design-Builder may need to create a Design-Builder’s Deviation List to identify any deviations from Owner’s Project Criteria.</p> <p>To identify other information that may be required, Design-Builder should familiarize itself with the terms of DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>

Section	Title	Instruction
2.6	Completion of the Agreement	If Design-Builder and Owner are unable to reach agreement on mutually acceptable revisions to the Proposal, and Owner does not accept the Proposal, Design-Builder will have no further involvement in the Project. Design-Builder's ownership of the Work Product prepared under this Agreement, and Owner's limited license to its use are described in Article 4, Ownership of Work Product.
2.7	Additional Services	Attach as a separate exhibit to this Agreement the scope of work for any Additional Services to be performed by Design-Builder, such as the development of Owner's Project Criteria pursuant to Section 2.2.2.
Article 4	Ownership of Work Product	<p>This Agreement provides that unless the parties select the optional provisions set forth in Article 4, Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product conditioned on the terms of Sections 4.2.1 and 4.2.2.</p> <p>DBIA recognizes that the critical decisions affecting the success of the Project and the greatest intellectual effort are typically developed during the preliminary phase. The purpose of Article 4 is to balance the interests of Owner, whose schedule will be adversely affected if it cannot use the Work Product created under this Agreement, and Design-Builder, who may not have been compensated for the full market value of its preliminary work, and who must be protected from liability for design that it does not complete or construct.</p>
4.2.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount of additional compensation Owner will pay Design-Builder for the right to use the Work Product. Enter the amount of this additional compensation.
5.1	Commencement Date	Design-Builder will commence its services within five (5) days of its receipt of Owner's Notice to Proceed, and complete its services no later than the calendar day duration of time negotiated between the parties. Enter the calendar days duration of this negotiated Contract Time.
5.2	Interim Dates	Attach an exhibit for interim dates, if any.
6.1	Contract Price	Insert the Contract Price, or the basis for its calculation as agreed to by the parties.
7.1	Payment	Insert the method agreed upon by Owner and Design-Builder for partial and final payment.
7.2	Interest	Enter the rate at which interest will accrue on Design-Builder's payments, if unpaid five (5) days after due.
9.1	Dispute Resolution	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. This Agreement provides for mandatory, non-binding mediation followed by binding arbitration for any dispute not resolved by mediation . The parties are encouraged to attempt to negotiate a mutually satisfactory resolution of any claim, dispute, or controversy prior to resorting to mediation.
9.8	Other Provisions	Insert any other provisions.

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Standard Form of Preliminary Agreement Between Owner and Design-Builder

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

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

OWNER:

Cape Fear Public Utility Authority
235 Government Center Drive
Wilmington, NC 28403

DESIGN-BUILDER:

(Name and address)

PROJECT:

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

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

Article 1

General

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* (2010 Edition) ("General Conditions of Contract"), as revised.

Article 2

Design-Builder's Services and Responsibilities

2.1 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. 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.

2.2 Preliminary Services.

2.2.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project. 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.

2.2.2 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 pursuant to Section 2.7 hereof. 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.

2.3 Schematic Design Documents. Design-Builder shall prepare Schematic Design Documents based on Owner's Project Criteria, as may be revised in accordance with Section 2.2.2 hereof. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

2.4 Proposal. Based on Owner's Project Criteria, the Schematic Design Documents, as each may be revised pursuant to Sections 2.2.2 and 2.3 above, and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

2.4.1 a proposed contract price for the design and construction of the Project, which price shall be in the form of a lump sum or the cost of the work plus a fee with an option for a Guaranteed Maximum Price ("GMP");

2.4.2 a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;

2.4.3 all other information necessary for the parties to enter into DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), with the accompanying General Conditions of Contract, DBIA Document 535, as revised; and

2.4.4 the time limit for acceptance of the Proposal.

2.4.5 Design-Builder's proposal is attached hereto and incorporated by reference as Attachment B.

2.5 Review of Proposal. Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal.

2.6 Completion of This Agreement. Design-Builder's services under this Agreement shall be deemed completed upon meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder finds acceptable.

2.7 Additional Services. Design-Builder shall perform the Additional Services set forth in a separate exhibit to this Agreement. The cost for such services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

Article 3

Owner's Services and Responsibilities

3.1 Timely Performance. Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under this Agreement.

3.2 Owner's Project Criteria. Owner shall provide Design-Builder with Owner's Project Criteria. If Owner desires that Design-Builder assist Owner in developing such criteria as an Additional Service under Section 2.7 hereof, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project. Owner's Project Criteria is attached hereto and incorporated by reference as Attachment A.

3.3 Owner Provided Information. 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 its obligations hereunder:

~~**3.3.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;~~

~~**3.3.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;~~

3.3.3 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;

3.3.4 A legal description of the Site;

3.3.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

3.3.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth below.

4.2 Owner’s Limited License. ~~If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment in full of the amounts due Design-Builder under this Agreement, shall grant Owner a limited license to use the Work Product to complete the Project, conditioned on the following:~~

~~**4.2.1** Use of the Work Product is at Owner’s sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”). 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 of the Work Product; and~~

~~**4.2.2** Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product in accordance with this Article 4.~~

[At the parties’ option, one of the following may be used in lieu of Section 4.2]:

~~If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment in full of the amounts due Design-Builder under this Agreement: (a) grants Owner a limited license to use the Work Product in connection with the Owner’s completion of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in those portions of the Work Product that consist of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on the following:~~

~~**4.2.1** Use of the Work Product is at Owner’s sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”). 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 of the Work Product; and~~

~~4.2.2~~ Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product in accordance with this Article 4.

or

If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment in full of the amounts due Design-Builder under this Agreement, transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on the following:

4.2.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"). 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 of the Work Product; and

4.2.2 Owner agrees to pay Design-Builder the additional sum of _____ TBD _____ Dollars (\$ _____ TBD _____) as compensation for the right to use the Work Product in accordance with this Article 4.

Article 5

Contract Time

5.1 Commencement Date. Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. Design-Builder shall complete such services no later than _____ TBD _____ (_____) calendar days after the Date of Commencement.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement.

Article 6

Contract Price

6.1 Contract Price. The Contract Price for this Agreement is as set forth below: : *(Provide for a fixed lump sum amount, cost of the work plus a fee with a GMP, hourly rates, or some other basis of compensation)-Lump Sum*

6.2 Scope of Contract Price. The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement, and shall be deemed to include all the sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement.

Article 7

Procedure for Payment

7.1 Payment. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder:

7.1.1 Design-Builder shall submit an Application for Payment for partial payment to the Owner no later than the 30th day of every month.

7.1.2 Tasks shall be billed based upon Design Builders' actual percentage of the total services completed during the invoice period. Invoice shall detail the task amount being billed, amount billed to date, and remaining amount to be billed.

7.1.3 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment.

7.2 Interest. Payments due and unpaid by Owner to Design-Builder shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____%).

Article 8

Electronic Data

8.1 Electronic Data.

8.1.1 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").

8.2 Transmission of Electronic Data.

8.2.1 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.

8.2.2 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.

8.2.3 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.

8.3 Electronic Data Protocol.

8.3.1 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 8.3.

8.3.2 Electronic Data will be transmitted in the format agreed upon in Section 8.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

8.3.3 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 if such information changes prior to Final Completion.

8.3.4 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 9

Other Provisions

9.1 Initial Dispute Resolution. The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (“AAA”) pursuant to the Construction Industry Mediation Rules then in effect. ~~Any claim, dispute, or controversy arising out of or relating to this Agreement or the breach thereof which has not been resolved by mediation shall be submitted to binding arbitration administered by the AAA pursuant to the Construction Industry Arbitration Rules then in effect.~~

In the event that mediation is not invoked by the parties or that mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction located in New Hanover County, North Carolina which shall be the sole forum for any litigation with respect to this Agreement or the subject matter thereof. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if an applicable statute of limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation or legal proceeding. Provided, however, that the fees of the mediator and any filing fees shall be shared equally by the parties.

9.2 Confidentiality. Confidential Information is defined ~~as those functions and properties as defined in Chapter 132 of NC General Statutes. as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies it 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 services set forth in this Agreement.

9.3 Assignment. Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

9.4 Governing Law. This Agreement shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

9.5 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

9.6 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

9.7 Entire Agreement. This Agreement forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

9.8 Other Provisions. Other provisions, if any, are as follows:

9.8.1 Release and Indemnity

To the fullest extent permitted by law, and except to the extent caused by the sole negligence or willful misconduct of the AUTHORITY, Design-Builder shall save, defend, hold harmless, and indemnify the AUTHORITY, its officers, directors, members, partners, agents, and employees from liability of any kind, including all claims, costs (including defense), damages, and losses accruing or resulting to any person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from all claims, costs (including defense), damages, and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Design-Builder, directly or indirectly, in the performance of this Contract. This representation and warranty shall survive the termination or expiration of this Contract. The indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder or any Subcontractor under Workmen's Compensation Acts, Disability Benefit Acts or other employee benefits acts.

9.8.2 Personnel

It is mutually agreed that Design-Builder is an independent contractor and not an agent or employee of the Owner nor does this create any type of joint employment relationship with any of the employees of the Design-Builder. As such the Design-Builder, or any employees thereof, or subcontractors, or any employees thereof, shall not be entitled to any Authority employment benefits, such as, but not limited to, wages or salary, vacation, sick leave, insurance, workers' compensation, or pension and retirement benefits.

9.8.3 Conflict of Interest

No paid employee of the OWNER shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

9.8.4 Suspension or Termination of Agreement

9.8.4.1 In the event that review of the DESIGN-BUILDER'S performance shows non-conformance to the work required by this contract, the Scope of Services or other terms or

conditions contained herein as a result of the DESIGN-BUILDER'S negligent errors, omissions or acts, the DESIGN-BUILDER shall be in breach of this agreement and the OWNER may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

9.8.4.2 The OWNER shall also have the right to suspend this agreement upon written notice to the DESIGN-BUILDER. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which the DESIGN-BUILDER shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the OWNER. If, in the opinion of the OWNER the DESIGN-BUILDER remains in violation of this agreement at the completion of the ten (10) day suspension period, the OWNER shall have the right to terminate this agreement whereupon all obligations of the OWNER to the DESIGN-BUILDER shall cease.

9.8.4.3 In the event this project is terminated prior to completion of the services by the DESIGN-BUILDER, the DESIGN-BUILDER shall be paid for services performed to the date of termination. (In no event will the amount due DESIGN-BUILDER in the event of termination exceed that amount set forth in Article 6 of this agreement. DESIGN-BUILDER shall be paid for all reimbursable, as defined herein, which are due him.)

9.8.4.4 This agreement may be terminated without cause by the OWNER with thirty (30) days written notice to DESIGN-BUILDER.

9.8.4.5 Nothing contained herein shall prevent the OWNER from pursuing any other remedy which it may have against DESIGN-BUILDER including claims for damages.

9.8.5 Insurance Requirements

DESIGN-BUILDER shall maintain insurance from companies authorized to write business in North Carolina, with an A.M. Best rating of "A" or higher, and acceptable to the OWNER, of the kinds and minimum amounts specified below.

Certificates and Notice of Cancellation. Before commencing work under this contract and before OWNER will fully execute contract, DESIGN-BUILDER shall furnish OWNER with certificates of all insurance required below. Certificates shall indicate the type, amount, class of operations covered, effective date and expiration date of all policies. The DESIGN-BUILDER shall provide that the insurance contributing to satisfaction of insurance requirements defined below. Minimum scope and insurance requirements shall not be canceled, terminated or modified by the DESIGN-BUILDER without prior written approval of the OWNER; DESIGN-BUILDER shall provide 30 days' notice to the OWNER (by letter) if any policy required by this contract is canceled or non-renewed. 10 days' notice shall be provided in the case of non-payment of premiums.

The Certificate of Insurance, naming the OWNER as an additional insured where specified, shall be further evidenced by an actual endorsement furnished to the OWNER from the insurer.

The amount of insurance to be provided for all coverages listed under this section shall be not less than \$1,000,000.00, unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from DESIGN-BUILDER'S performance of professional services under this contract. The DESIGN-BUILDER shall be responsible for any liability directly or indirectly arising out of professional services performed under this contract by a subDesign-Builder which liability is not covered by the subDesign-Builder's insurance.

9.8.5.1 The DESIGN-BUILDER shall maintain during the life of this contract WORKERS'

COMPENSATION and EMPLOYER'S LIABILITY INSURANCE covering all of the DESIGN-BUILDER'S employees to be engaged in the work under this contract, providing the required statutory benefits under North Carolina Workers Compensation Law, and Employers Liability Insurance providing limits at least in the amount of \$500,000/500,000/500,000 applicable to claims due to bodily injury by accident or disease. Whenever work under this contract includes exposure to claims under the U. S. Longshoremen's and Harborworker's Act, such coverage shall be provided by appropriate endorsement to this policy.

The insurer shall agree to waive all rights of subrogation against the Owner, its officers, officials, and employees for losses arising from work performed by the Design Builder for Owner. Certificate of Insurance shall be further evidenced by an actual endorsement furnished to the Owner before Owner will fully execute contract.

9.8.5.2 The DESIGN-BUILDER shall take out and maintain during the life of this contract COMMERCIAL GENERAL LIABILITY INSURANCE, coverage. The OWNER shall be named as an additional insured under this policy. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work involves these exposures. The OWNER shall be named an additional insured on this policy.

9.8.5.3 The DESIGN-BUILDER shall take out and maintain during the life of this agreement AUTOMOBILE LIABILITY INSURANCE. Such coverage shall be written on a comprehensive form covering owned, non-owned, hired and leased vehicles, providing liability limits at least in the amount of \$1,000,000 per occurrence combined single limits applicable to claims due to bodily injury and/or property damage. The OWNER shall be named an additional insured on this policy.

9.8.5.4 Design-Builder shall maintain in force professional liability or errors and omissions liability insurance appropriate to the contractor's profession, naming as insured any professional, individual or firm performing the services required in this contract. Coverage as required in this paragraph shall apply to liability for professional errors, acts, omissions or any other negligent acts arising out of the scope of the contractor's services as defined in this contract. Coverage shall be written subject to limits of not less than \$ 2,000,000 per claim.

If any of the policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of this contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Company must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

The DESIGN-BUILDER shall be responsible for securing and providing insurance certificates for any subcontractor employed on this project and shall furnish a copy of the insurance to the OWNER. Subcontractors or Sub-consultants shall be insured to the limits referenced above. Failure of the DESIGN-BUILDER to provide these certificates may result in termination of the agreement or claims made against the DESIGN-BUILDER for any insurance claims made in conjunction with this project.

The DESIGN-BUILDER shall furnish the schedule of insurance carried under this contract in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date and expiration date of all policies. This Certificate shall be in six (6) counterparts and when the contract is signed by the DESIGN-BUILDER, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents.

9.8.6 Subcontracts

Design-Builder shall submit a list of all licensed subcontractors and licensed design professionals and in addition other non-licensed subcontractors performing five percent of the work or more to the Owner with its proposal for project delivery. After Owner's acceptance of the project delivery proposal, Design-Builder shall make no subcontractor or design professional substitutions without Owner's consent, for subcontractors performing five percent of the work or more

9.8.7 Binding Effect

This agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent Design-Builders, and subcontractors of the parties.

9.8.8 Continuing Obligation

The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.

9.8.9 Minority Business Enterprise (MBE) Requirements

9.8.9.1 It is the policy of the Cape Fear Public Utility Authority that minority businesses as defined in NCGS 143-128.2(g)(1)(2) and (3) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part by Authority funds under this agreement. Consequently, the Minority Business requirements of NCGS 143-128 apply to this contract.

9.8.9.2 The goals for participation by minority firms as subcontractors on this project have been set at 10% of the dollar value of the construction portion of the contract. Minority Business goals are accomplished via subcontracts performed by certified businesses. Subcontracts may include supplying of materials.

9.8.9.3 Design Builder must make a good faith effort, as defined in NCGS 143-128 to subcontract 10% of the work to certified minority business firms. This requirement does apply even if the Design Builder is a certified minority business contractor. This requirement does not apply if the firm will be performing all of the work with their own workforce and will not be subcontracting any of the work.

9.8.9.4 Nothing in these guidelines shall be construed to require the Design Builder or CFPUA to award contracts or subcontract to or make purchase of materials or equipment from minority-business contractors or minority business subcontractors who do not submit the lowest responsible, responsive bid or bids.

9.8.9.5 Design Builders must identify the minority business subcontractors that will be used on the project with corresponding total dollar value of the bid. Design builder must submit Affidavit C "Portion of the Work to be Performed by Minority Businesses" that includes a description of the portion of work to be executed by minority businesses, expressed as

percentage of the total contract price, which is equal to or more than the applicable goal. Or Affidavit D "Good Faith Efforts" that includes a description of the portion of work to be executed by minority businesses, expressed as percentage of the total contract price, with documentation of Good Faith Effort if the percentage is not equal to the applicable goal. A listing of documentation that may be required to demonstrate the Design Builders good faith effort to meet the goals set forth in these provisions is listed on Affidavit D.

9.8.9.6 Only Minority Businesses that meet the minimum requirements as established by NCGS 143-128.2 and are certified by the North Carolina Department of Administration, Office for Historically Underutilized Business (HUB) certification will count towards the goal.

9.8.9.7 Minority Businesses identified by the Design Builder may not be substituted or replaced without just cause and only with the written approval of CFPUA. If a substitution is agreed to by CFPUA, the Design Builder must make a good faith effort to replace the Minority Business with another Minority Business. Please see NCGS 143-128.2(d).

9.8.10 Immunity Not Waived

This agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the OWNER'S actual cost and neither party intends to waive its sovereign immunity by reason of this agreement.

9.8.11 E-Verify

DESIGN-BUILDER shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if DESIGN-BUILDER utilizes a subcontractor, DESIGN-BUILDER shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

9.8.12 Advertising

No advertising, sales promotion, or other materials of the firm will identify or reference this contract, or the Cape Fear Public Utility Owner's name without the written consent of the Owner. Exception may be taken to the above with regard to listing the Owner as a job history reference in responses to requests for proposals."

9.8.13 Non-Appropriation of Funds.

If the governing board does not appropriate the funding needed by CFPUA to make payments under this Agreement for a given fiscal year, CFPUA will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, CFPUA will promptly notify the DESIGN-BUILDER of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by CFPUA, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

9.8.14 Iran Divestment Act

Design-Builder certifies by signing this agreement that they are in compliance with the Iran Divestment Act, N.C.G.S. Chapter 147 Article 6E and as of the date listed below, the IRMA named in this agreement is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58. Design-Builder shall not utilize any subcontractor found on the State Treasurer's Final Divestment List pursuant to N.C.G.S. 147-86.58 located on the State Treasurer's website at the address www.nctreasurer.com/iran.

9.8.15. Environmental Policy

Environmental Management: The Cape Fear Public Utility Authority has developed and implemented an ISO 14001 Environmental Management System (EMS), and is third party certified. Per the certification the Authority must ensure all persons doing work on their behalf is made aware of our Environmental Policy. The Environmental Policy can be found on the CFPUA website www.cfpua.org, click on the Departments tab, Environmental Management, and then choose Environmental Management. Contractor/Vendor certifies by signing this agreement that they have reviewed the Environmental Policy and understand their work contributes to the effectiveness of the EMS and may have a positive or negative impact on the Environment.

9.8.16 Other Laws and Regulations

DESIGN-BUILDER will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. DESIGN-BUILDER will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder.

9.8.17 Non-Discrimination

DESIGN-BUILDER will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, DESIGN-BUILDER will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at OWNER'S option, in a termination or suspension of this agreement in whole or in part.

Article 10 – Not used

Article 11 – Not used

Article 12

Federal Requirements

12.1 Equal Employment Opportunity

12.1.1 As the Contract is a Federally Assisted Construction Contract exceeding \$10,000, during the performance of this Contract, any Design Builder selected shall be subject to the following conditions:

12.1.1.1 Design Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Design Builder will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race,

color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

12.1.1.2 Design Builder will, in all solicitations or advertisements for employees placed by or on behalf of Design Builder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

12.1.1.3 Design Builder will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Design Builder's legal duty to furnish information.

12.1.1.4 Design Builder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Design Builder's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.1.1.5 Design Builder will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.1.1.6 Design Builder will furnish to the Administering Agency and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

12.1.1.7 In the event of Design Builder's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Design Builder may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed, and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.1.1.8 Design Builder will include the portion of the sentence immediately preceding paragraph A.1. of this Section II and the provisions of paragraphs A.1. through A.7. in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Design Builder will take such action with respect to any Subcontract or

purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event Design Builder becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Design Builder may request the United States to enter into such litigation to protect the interests of the United States.

Since the parties to the Contract are local government agencies, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

12.1.1.9 Owner agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Design Builder and any Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.

12.1.1.10 Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, with a Design Builder debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Design Builder and any Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Owner agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

12.2 Copeland "Anti-Kickback" Act

The Design Builder and any Subcontractors performing work under the Contract shall comply with 18 U.S.C. § 874. All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Design Builder or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Owner shall report all suspected or reported violations to Treasury.

12.3 Davis-Bacon Act

All suppliers, Design Builders, subcontractors, consultants, and sub-consultants must comply with Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

12.4 Contract Work Hours and Safety Standards Act

12.4.1 Overtime Requirements. No Design Builder or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

12.4.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in 12.4.1 (Overtime Requirements), above, Design Builder and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Design Builder and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in 12.4.1 (Overtime Requirements), above, in the sum of \$33 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 12.4.1 (Overtime Requirements), above.

12.4.3 Withholding for Unpaid Wages and Liquidated Damages. Owner shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold, or cause to be withheld, from any monies payable on account of work performed by Design Builder or Subcontractor under any such contract or any other federal contract with the same prime Design Builder, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Design Builder, such sums as may be determined to be necessary to satisfy any liabilities of Design Builder or Subcontractor for unpaid wages and liquidated damages as provided in 12.4.2 (Violation; Liability for Unpaid Wages; Liquidated Damages) of this section.

12.4.4 Subcontracts. The Design Builder or Subcontractor shall insert in any subcontract the clauses set forth in 12.4.1 through 12.4.4 and a clause requiring Subcontractors to include these clauses in any lower-tier Subcontracts. Design Builder shall be responsible for compliance by any first-tier Subcontractor or lower-tier Subcontractor with the clauses set forth in 12.4.1 through 12.4.4.

12.4.5 Payroll and Records. Design Builder or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and last known address, telephone number, and email address of each such employee, Social Security number, correct classification(s) of work actually performed, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Design Builder or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Design Builder or Subcontractor will permit such representatives to interview employees during working hours on the job.

12.4.6 Exceptions. None of the requirements of Article 12 of this Contract shall apply if the Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

12.5 Rights to Inventions Made Under a Contract or Contract

12.5.1 The Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.

12.5.2 Unless otherwise provided by law, suppliers, Design Builders, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, Design Builders, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

12.5.3 Unless prohibited by North Carolina law, upon request by the Government, Owner will require the Design Builder to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Design Builder of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Design Builder shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Design Builder.

12.5.4 Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

12.6 Clean Air Act and Federal Water Pollution Control Act

12.6.1 Clean Air Act. Owner agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The selected Design Builder shall report each violation to Owner and Owner will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office. The Design Builder shall include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

12.6.2 Federal Water Pollution Control Act. Owner agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The selected Design Builder shall report each violation to Owner and Owner will, in turn, report each violation as required to assure notification to Treasury and the appropriate Environmental Protection Agency Regional Office. The Design Builder shall include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

12.7 Debarment and Suspension

12.7.1 Due to its receipt of Fiscal Recovery Funds, Owner is a participant in a non-procurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, the Contract is a lower-tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department

of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).

12.7.2 If this Contract is a covered transaction as set forth in Section VIII.A., above, Design Builder shall certify as of the date of execution of the Contract that Design Builder, Design Builder's principals (defined at 2 C.F.R. § 180.995), and any affiliates (defined at 2 C.F.R. § 180.905) of both Design Builder and Design Builder's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) the Contract shall be void, (2) Owner shall not make any payments of federal financial assistance to Design Builder, and (3) Owner shall have no obligations to Design Builder under the Contract.

12.7.3 The Design Builder must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-tier covered transaction into which it enters. This certification is a material representation of fact relied upon by Owner and all liability arising from an erroneous representation shall be borne solely by the Design Builder.

12.7.4 If it is later determined that the Design Builder did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Owner the Government may pursue available remedies, including but not limited to suspension and/or debarment.

12.8 Byrd Anti-Lobbying Amendment

12.8.1 The Design Builder shall certify to Owner and shall cause each tier below it to certify to the tier directly above such tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. The selected Design Builder shall, and shall cause each tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from tier to tier up to the Owner, which will, in turn, forward the certification(s) to Treasury. Design Builder shall cause the language of this 12.8.1 to be included in all Subcontracts. This certification is a material representation of fact upon which Owner has relied when entering into the Contract, and all liability arising from an erroneous representation shall be borne solely by the Design Builder.

12.8.2 Any Design Builder that bids or applies for a contract exceeding \$100,000 (including the Contract, if applicable) also must file with Owner the certification in Attachment 1 to this Contract, which is attached hereto and incorporated herein.

12.8.3 Any Subcontractor to the Contract with a Subcontract (at any tier) exceeding \$100,000 shall file with the tier above it the certification in Attachment 1 to this Contract, which is attached hereto and incorporated herein.

12.9 Procurement of Recovered Materials

12.9.1 12.9.2 shall apply if (1) the Contract involves the purchase of an item designated by the Environmental Protection Agency ("EPA") in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Owner's preceding fiscal year exceeded \$10,000.

12.9.2 All suppliers, Design Builders, and subcontractors, consultants, sub-consultants must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the

Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

12.9.3 All suppliers, Design Builders, and subcontractors, consultants, sub-consultants should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

12.10 Domestic Preferences for Procurements

12.10.1 For purposes of 12.10, the terms below are defined as follows:

12.10.1.1 “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.

12.10.1.2 “Manufactured Products” means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12.10.2 The selected Design Builder should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials Produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other Manufactured Products. The Design Builder shall cause any Subcontractors to include the requirements of 12.10 in any Subcontracts.

12.10.3 Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

12.11 Solicitation of Minority and Women-Owned Business Enterprises

12.11.1 If the selected Design Builder intends to let any Subcontracts, Owner shall require that the Design Builder (1) place qualified small and minority businesses and women’s business enterprises on its solicitation lists; (2) assure that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

12.11.2 For the purposes of Section 12.11, an entity shall qualify (1) as a “minority business” or “women’s business enterprise” if it is currently certified as a North Carolina “historically underutilized business” under Chapter 143, Section 128.4(a) of the N.C. General Statutes

(hereinafter G.S.), and (2) as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

12.12 Access to Records

12.12.1 Owner, the selected Design Builder, and the parties to the Contract will provide the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Design Builder which are directly pertinent to this Contract to conduct audits or any other investigations. Any of the foregoing parties may reproduce such records by any means whatsoever or copy excerpts and transcriptions as reasonably needed.

12.12.2 Owner agrees to retain all records covered by 12.12 through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract.

12.13 Conflicts of Interest; Gifts and Favors

12.13.1 Owner will use Fiscal Recovery Funds to pay for the cost of this Contract and (2) the expenditure of Fiscal Recovery Funds is governed by the Owner’s Conflict of Interest Policy, any Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, N.C.G.S. §§14-234(a)(1) and -234.3(a)).

12.13.2 The selected Design Builder shall certify to Owner that as of the date of execution of the Contract, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Owner or any party to the Contract involved in the selection, award, or administration of the Contract (each a “Covered Individual”); no member of a Covered Individual’s immediate family; no partner of a Covered Individual; and no organization (including Design Builder) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Design Builder. Should the Design Builder obtain knowledge of any such interest, or any tangible personal benefit described in the preceding sentence after the date thereof, Design Builder shall promptly disclose the same to Owner in writing.

12.13.3 The selected Design Builder shall certify to Owner that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Owner. Should the Design Builder obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date thereof, Design Builder shall promptly disclose the same to Owner in writing.

12.14 Assurances of Compliance with Title VI of the Civil Rights Act of 1964

12.14.1 The selected Design Builder and any Subcontractor, or the successor, transferee, or assignee of the Design Builder or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented by Treasury’s Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

12.15 Other Non-Discrimination Statutes

12.15.1 Owner is bound by and agrees, to the extent applicable to the selected Design Builder, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

12.5.1.1 The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

12.15.1.2 Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

12.15.1.3 The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

12.15.1.4 Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

12.16 Miscellaneous

12.16.1 *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Owner shall encourage the selected Design Builder to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

12.16.2 *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Owner shall encourage the selected Design Builder to adopt and enforce policies that ban text messaging while driving.

12.16.3 *Drug-Free Workplace Regulations.* All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.

12.16.4 *Whistleblower Protection Act.* An employee of Design Builder or any supplier, contractor, subcontractor, consultant, or sub-consultant must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

12.16.4 *Hatch Act.* All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12.16.5 Telecommunications Huawei / ZTE Ban. 2 C.F.R. 200.216 prohibits non-federal entities receiving federal grant funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system from the Chinese manufacturers Huawei and ZTE.

Modifications have been made to the original language of this Agreement and the General Conditions of Contract. Language that has been added is underlined to distinguish it from the original language. Language with a strike through it is delete from the original language. By initialing below, Owner and Design-Builder acknowledge and accept all modified language in this Agreement and General Conditions of Contract.

Initial of Owner

Initial of Design-Builder

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.

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.

DESIGN-BUILDER:

ADDRESS:

BY: _____

PRINTED: _____

TITLE: _____

DESIGN-BUILDERS'S LICENSE NO.: _____

EXPIRATION DATE: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that the corporation's Secretary, Assistant Secretary, or Trust Officer, Mr./Mrs./Ms. _____ personally came before me this day and acknowledged that s/he is the _____ of _____, a corporation, and that by authority duly given and as act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assistant Vice President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and attested by him/herself as its Secretary, Assistant Secretary, or Trust Officer.

WITNESS my hand and official seal this the _____ day of _____, 20 _____.

Notary Public

My commission expires: _____

DESIGN-BUILDERS SEAL:

ATTEST:

BY: _____

PRINTED: _____

TITLE: _____

OWNER

CAPE FEAR PUBLIC UTILITY AUTHORITY SEAL:

235 Government Center Drive
Wilmington, North Carolina 28403

BY: _____
Kenneth R. Waldroup
Executive Director

ATTEST: _____
Donna S. Pope
Clerk to the Board

NORTH CAROLINA
NEW HANOVER COUNTY

I, _____ the undersigned Notary Public do hereby certify that Donna S. Pope personally came before me this date and acknowledged that she is the Clerk to the Board of Cape Fear Public Utility Authority, Wilmington, North Carolina, and that, by authority duly given and the act of the Board, the foregoing document was signed in its name by its Executive Director, sealed with its corporate seal, and attested by herself as its Clerk.

WITNESS my hand and official seal this the _____ day of _____, 20 ____.

Notary Public

My commission expires: _____

AUTHORITY ATTORNEY’S CERTIFICATION

This instrument has been reviewed and is approved as to form this the _____ day of _____, 20____.

Brittany Spell
Deputy Authority Attorney

AUTHORITY ACCOUNTANT’S CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the _____ day of _____, 20____.

John McLean
Chief Financial Officer



STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM

Document No. 525

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



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. Acknowledgement.** 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. 525 Standard Form of Agreement Between Owner and Design-Builder - Lump Sum (2010 Edition)

Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.1.3	Identify other exhibits to the Agreement
_____	Section 4.2	Note the optional provisions that are provided
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days and note the optional language that is provided
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages and note the optional provisions that are provided
_____	Section 5.5	If the parties select the option provided they have to insert an amount
_____	Section 5.6	Complete blanks for early completion bonus and note the optional provision that is provided
_____	Section 5.7	Note the optional provisions that are provided
_____	Section 6.1	Complete blanks for Contract Price
_____	Section 6.2	Insert markups for changes and note optional provisions
_____	Section 6.3.4	Note the optional provision that is provided
_____	Section 6.4.1	Note optional provision
_____	Section 7.1.1	Complete blanks for day of month
_____	Section 7.2.1	Complete blanks for retention percentage and note optional provision
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1.3	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Exhibit
_____	Section 10.2	Insert amount and conditions of bonds or other security and note the options that are provided
_____	Section 11.1	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

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 Documents 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 Agreement	<p>DBIA Document No. 525 (“Agreement”) should be used only when the parties intend that Owner pay Design-Builder a lump sum fixed price for the completion of all design and construction services. There will be greater mutual understanding and cooperation if the lump sum is established based on Owner’s Project Criteria that are well defined.</p> <p>If there is uncertainty about Owner’s Project Criteria, or it remains to be developed by Owner and Design-Builder jointly, a cost-plus/guaranteed maximum price (“GMP”) contracting approach may be more suitable. In such case, the parties should use DBIA Document No. 530.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page, 1 enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.2	Basis of Design Documents	The Basis of Design Documents are critical in establishing the scope of work. These documents include the Owner’s Project Criteria, Design-Builder’s Proposal, and the Deviation List, if any, contained in the Design-Builder’s Proposal. Prior to the execution of this Agreement, Design-Builder will have submitted its Proposal based on Owner’s Project Criteria. To avoid ambiguities or conflicts between Owner’s Project Criteria and Design-Builder’s Proposal, Design-Builder’s Proposal shall specifically list any deviations from Owner’s Project Criteria. Design-Builder’s Deviation List shall, if accepted by Owner, become a Contract Document and shall have precedence over Owner’s Project Criteria.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents subject to Owner’s review and approval.
3.2	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. This hierarchy of documents reflects DBIA’s belief that the Basis of Design Documents are critical documents that take precedence over other Contract Documents existing at the time the Agreement is executed. This section also makes clear that if a Deviation List exists it takes precedence over the Owner’s Project Criteria. Moreover, Section 2.1.3 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.
3.3	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.

Section	Title	Instruction
3.4	Design Specification	The Owner is cautioned that if it includes design specifications in its Project Criteria, there is case law holding that the Design-Builder is entitled to rely on such information, and to the extent such information is not accurate, the Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time. Accordingly, the Owner to avoid such potential liability should consider using performance specifications.
4.1	Work Product	This Agreement provides that the Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project. This Section also provides the parties with the option of transferring ownership of some or all of the Work Product to the Owner upon payment in full for all Work performed. Generally, where the Owner desires ownership of Work Product, it is sufficient to transfer ownership of unique architectural and design elements.
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or third-party forces, Design-Builder shall grant Owner the rights set forth in Section 4.2, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.
4.4	Owner's Limited License Upon Design-Builder's Default	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, to complete the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2.
4.5	Owner's Indemnification for Use of Work Product	Owner's use or alteration of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved. The parties in this Section have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract if they want to use a Temporary Certificate of Occupancy as the benchmark. If this option is selected, Substantial Completion will be deemed to be achieved no later than the date a Temporary Certificate of Occupancy is issued if applicable to the Project.

Section	Title	Instruction
5.2.2	Interim Milestones	<p>It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. As presently drafted no remedy is provided to the Owner if an interim milestone is not met. If the Owner has special requirements as it relates to interim milestones, the Owner may want to consider a remedy for the Design-Builder's failure to meet an interim milestone, as well as a bonus to the Design-Builder for satisfying such interim milestone.</p>
5.4	Liquidated Damages	<p>Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder.</p> <p>Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed. The parties are also provided the option of establishing liquidated damages if the Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties have to negotiate the number of days, as well as the liquidated damages amount. The parties in negotiating liquidated damages should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to the Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.</p> <p>The parties also have the option here of eliminating liquidated damages altogether, in which case the Owner can recover actual damages for Project delay at an amount that is capped by the parties. The Owner is cautioned that even if this option for actual damages is selected it still cannot recover consequential damages, as these are waived under Section 10.5.1 of the General Conditions of Contract.</p>
5.5	Liquidated Damages Cap	<p>The parties can agree to cap liquidated damages for delay at a negotiated amount.</p>
5.6	Early Completion Bonus	<p>If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. The parties also have the option in Section 5.6 of capping the early completion bonus at a negotiated amount.</p>
5.7	Compensation for Force Majeure Events	<p>The parties are provided the opportunity of providing the Design-Builder the right to receive compensation for Force Majeure Events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties have to negotiate how many cumulative days of Force Majeure delays must occur before the Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.</p>
6.1	Contract Price	<p>Enter the lump sum price Owner will pay Design-Builder for the Scope of Work. The Contract Price should compensate Design-Builder for the services it provides and the risk it assumes in providing single point responsibility to Owner.</p>

Section	Title	Instruction
6.2	Markups for Changes	Enter the markups agreed upon by Design-Builder and Owner to be used for pricing Changes to the Work. Prior to negotiating or agreeing to these markups, both parties should familiarize themselves with Article 9 of the General Conditions of Contract, Changes to the Contract Price and Time. For additive Change Orders, the parties have to negotiate the Fee the Design-Builder will receive. For deductive Change Orders, parties have the option by checking the appropriate box of whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.3.4	Allowance Value	This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance Values. The Allowance Value for which the Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs and fee, are deemed to be included in the Contract Price. However, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.2.
6.4	Performance Incentives	There may be performance incentives that will influence Project success. Such incentives may include award fees tied to the Design-Builder achieving certain standards relative to client satisfaction, safety, and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. Any agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.
7.2.1	Retainage	<p>Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.</p> <p>The parties are provided the option of modifying the retainage provision by checking the box. This option excludes from retainage the Design-Builder's General Conditions costs and amounts paid to Design-Builder's Design Consultant. The rationale for selecting this option is that the Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-bid-build delivery method, the Owner typically does not retain sums from its designer.</p>
7.4	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
7.5	Record Keeping	The Owner is provided access to Design-Builder's accounting information as it relates to changes of the Work. However, if the parties have agreed to multipliers or markups for changes, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, the Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.

Section	Title	Instruction
8.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.3.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	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.
Article 9	Representatives of the Parties	<p>Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively.</p> <p>Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively.</p> <p>The parties can elect to establish Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.</p>
10.1	Insurance	Attach an Insurance Exhibit setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.
11.1	Other Provisions	Insert any other provisions. For example, the parties may elect to have disputes resolved through litigation rather than arbitration in which case the optional language in this Section should be included.

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Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

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

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

OWNER:

CAPE FEAR PUBLIC UTILITY AUTHORITY, a body politic and corporate organized under North Carolina
General Statutes Chapter 162A, and located in New Hanover County, North Carolina

DESIGN-BUILDER:

(Name and address)

PROJECT:

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

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

Article 1

Scope of Work

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

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

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

2.1.2 The Basis of Design Documents, including the Owner’s Project Criteria, Design-Builder’s Proposal and the Deviation List, if any, contained in the Design-Builder’s Proposal, which shall specifically identify any and all deviations from Owner’s Project Criteria;

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

2.1.4 The General Conditions of Contract; and

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

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, 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.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner’s Project Criteria, and then the Design-Builder’s Proposal.

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

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the 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; provided, however, that Design-Builder shall make reasonable efforts to avoid any Time or Price impact caused by inaccurate information in the Design specifications.

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

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications, final tracings, plans, maps, electronic files including computer and/or geographic information system applications and/or reports prepared or obtained under this Agreement, 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 ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

~~**4.2 — Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.~~

~~*[At the parties' option, one of the following may be used in lieu of Section 4.2]:*~~

~~Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.~~

~~Or~~

4.2 Owner's Limited License Ownership of Work Product Upon Project Completion and Payment in Full to Design-Builder.

Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-

Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

4.3 ~~Owner's Limited License Ownership of Work Product upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.~~ If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a ~~limited~~ license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

~~4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and~~

4.3.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

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

~~4.5 **Owner's Indemnification for Use of Work Product.** 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 4, Owner shall defend, indemnify and hold harmless such 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.~~

Article 5

Contract Time

5.1 ~~Date of Commencement.~~ The Work shall commence within ~~five (5)~~ ten (10) calendar days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 ~~Substantial Completion and Final Completion.~~

5.2.1 Substantial Completion of the entire Work shall be achieved ~~no later than _____~~ (~~_____~~) within _____ consecutive calendar days after the Date of Commencement ("Scheduled Substantial Completion Date"). Substantial Completion occurs when the Owner's requirements are met as defined in Section 6.6 of the General Conditions of Contract.

~~*[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1. if the Project is subject to a Temporary Certificate of Occupancy]*~~

The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

~~“Substantial Completion is 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, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official.”~~

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work (“Scheduled Interim Milestone Dates”) shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

~~5.2.3 Final Completion of the all Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable within _____ calendar days of the Date of Commencement. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 and 6.6.4 of the General Conditions of Contract.~~

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

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

5.4 Liquidated Damages. Design-Builder agrees to pay, as liquidated damages, to the Owner 00/100 Dollars (\$) for each consecutive calendar day the Work extends beyond the total time allotted for Substantial Completion of all Work and 00/100 Dollars (\$) for each consecutive calendar day the Work extends beyond the total time allotted for Final Completion of all Work, not as a penalty, but as liquidated damages. Design-Builder and Owner agree to liquidated damages because of the impractablility and extreme difficulty of fixing and ascertaining the actual damages the Owner would sustain in the event Design-Builder fails to achieve Substantial and Final Completion within the Contract Time, as may be adjusted.

5.4.1 ~~Owner shall have the right to deduct the liquidated damages from any payments, otherwise due, or to become due, to the Design-Builder, and to initiate applicable dispute resolution procedures to recover such liquidated damages to the extent they exceed amounts owed to the Design-Builder. 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”), Designer- Builder shall pay Owner _____ Dollars (\$ _____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.~~

[The parties may want to consider the following supplemental language within Section 5.4 if they want to assess liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 5.2.3 should be deleted and replaced with the following language.]

_____ Design-Builder understands that if Final Completion is not achieved within _____ days of the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within _____ days of Substantial Completion, Design-Builder shall pay to Owner _____

Dollars (\$ _____), as liquidated damages for each calendar day that Final Completion is delayed beyond the above referenced number of days.

[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following]

~~5.4~~ Design Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design Builder to achieve the Contract Time(s) set forth in this Article 5. Design Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design Builder's liability for actual damages for delays exceed _____ Dollars (\$ _____).

~~5.5~~ Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]

Owner and Design Builder agree that the maximum aggregate liability Design Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be _____ Dollars (\$ _____).

5.6 Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (\$ _____) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly)*

[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]

Owner and Design Builder agree that the maximum aggregate amount that Design Builder shall receive as the early Completion Bonus is _____ Dollars (\$ _____).

5.7 ***[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]***

In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.4 2 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design Builder shall only be entitled to an increase in the Contract Price if said events exceed _____ cumulative days. Said additional compensation shall be limited to:

[Check one box only]

\$ _____ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event, which are approved by Owner.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$ _____) ("Contract Price"), 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. Design-Builder shall pay all taxes in accordance with Article 6 of the General Conditions of Contract. The Contract Price includes compensation for all costs, direct and indirect, of Design-Builder's performance of the Work.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes 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 Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____ %) of the additional costs incurred for that Change Order, ~~plus any other markups set forth at Exhibit _____ hereto.~~

6.2.2 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.

or

An amount equal to the sum of: (a) _____ percent (_____ %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); ~~plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.~~

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

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

by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

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

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

~~***[In the alternative, the parties may want to delete Section 6.3.4 and add the following provision.]***~~

In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is _____ percent (____%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

~~**6.4 Performance Incentives.**~~

~~**6.4.1** Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.~~

~~*[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.]*~~

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit an Application for Payment for partial payment to the Owner no later than the 30th day of every month, to Owner on the _____ (____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within ~~ten (10) days~~ 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.

7.2 Retainage on Progress Payments.

7.2.1 Until the Work is fifty percent (50%) complete based on gross invoices, five percent (5%) of each periodic payment due to Design-Builder shall be retained by Owner. When the Work is fifty percent (50%) complete, Owner shall, with written consent of the surety, not retain any further

retainage from periodic payments due to the Design-Builder provided Design-Builder continues to satisfactorily perform the Work and any nonconforming Work identified as provided herein has been corrected by Design-Builder and accepted by Owner. In the event the Owner determines that Design-Builder's performance of the Work is unsatisfactory, the Owner may reinstate retainage from each subsequent periodic payment. The value of stored on-site materials shall not exceed twenty percent (20%) of the gross project invoices for the purposes of determining whether the Work is fifty percent (50%) complete.

Upon Substantial Completion, Owner may release a portion of the retainage to Design-Builder, retaining at all times an amount sufficient to cover the cost of the Work remaining to be completed. Consent of the Surety shall be obtained before any retainage is paid by the Owner. Consent of the Surety signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.

~~7.2.1 Owner will retain _____ percent (_____ %) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

~~*[Design-Builder and Owner may want to consider substituting the following retainage provision.]*~~

~~Owner will retain _____ percent (_____ %) from Design-Builder's Applications for Payment, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

~~7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.~~

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Upon completion and acceptance of the Work and under the condition that there are no outstanding items preventing final payment as defined in the General Conditions, the Owner shall pay the Design-Builder the final payment in accordance with North Carolina General Statutes Section 143-134.1. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Pursuant to North Carolina General Statutes Section 143-134.1, interest on amounts due but not paid shall bear interest at the rate of one percent (1%) per month.

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

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

~~8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following: The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this paragraph shall be by written notice of termination delivered to the Design-Builder specifying the extent of the termination and effective date.~~

~~8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;~~

~~8.1.2 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~~

8.1.1 Upon receipt of a notice of termination for convenience, the Design-Builder shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this paragraph:

8.1.2 Cease operations as specified in the notice;

8.1.3 Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;

8.1.4 Terminate all subcontracts and orders to the extent they relate to the Work terminated;

8.1.5 Proceed to complete the performance of Work not terminated;

8.1.6 Take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work; and

8.1.7 Transfer title to the Owner of completed or partially completed Work and materials, equipment, parts, fixtures, information, and Contract rights as the Design-Builder has.

8.1.8 Upon such termination, the Design-Builder shall recover as its sole remedy payment of the percentage of the Contract Price equal to the percentage of the Work performed satisfactorily and not previously paid for. The Design-Builder hereby waives and forfeits all other claims for payment and damages, including but not limited to anticipated profits or revenue or other

economic loss arising out of or resulting from such termination.

8.1.9 The Owner shall be credited for:

8.1.9.1 Payments previously made to the Design-Builder for the terminated portion of the Work;

8.1.9.2 Claims that the Owner has against the Design-Builder under this Contract; and

8.1.9.3 The value of the materials, supplies, equipment, or other items that are to be disposed of by the Design-Builder that are part of the Contract Price.

8.1.3 ***(Choose one of the following:)***

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

or

~~Overhead and profit in the amount of _____ percent (_____ %) on the sum of items 8.1.1 and 8.1.2 above.~~

~~**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:~~

~~**8.2.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price.~~

~~**8.2.2** If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price.~~

8.3 If Owner terminates this Agreement pursuant to Section 8.1 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 4.1 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

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

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

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

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

9.2 Design-Builder's Representatives.

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

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

Article 10

Bonds and Insurance

10.1 Insurance. ~~Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract. shall take out and maintain, during the term of this Agreement, all insurance required by Article 5 of the General Conditions, and shall, at the execution of this Agreement, attach to each of the counterparts thereof documentary proof of compliance in the form of a certificate from its insurer, stating the amount, policy numbers, and kinds of insurance carried. The Design-Builder shall provide that the insurance contributing to satisfaction of insurance requirements in the General Conditions, Section 5. Minimum Scope and Insurance Requirements shall not be canceled, terminated or modified by the Design-Builder without prior written approval of CFPUA; Design-Builder shall provide immediate notice to CFPUA (by letter) if any policy required by this contract is canceled or non-renewed.~~

10.2 Bonds and Other Performance Security. ~~Design-Builder shall provide Bonds as set forth in Article 5 of the General Conditions of Contract. It is agreed that if, at any time after the execution of this Agreement and the Performance Bond, the Owner shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if for any reason such bond(s) ceases to be adequate to cover the performance of the Work, the Design-Builder shall, at its expense, within five (5) days after receipt of notice from the Owner to do so, furnish an additional bond or bonds in such form and amount, and with such surety, or sureties, as shall be satisfactory to the Owner. the following performance bond and labor and material payment bond or other performance security:~~

Performance Bond.

[Check one box only. If no box is checked, then no bond is required.]

Required Not Required

Payment Bond.

[Check one box only. If no box is checked, then no bond is required.]

Required Not Required

Other Performance Security.

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

Required Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.1.1 E-VERIFY

Design-Builder shall comply with E-VERIFY requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Design-Builder utilizes a subcontractor, Design-Builder shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

11.1.2 IRAN DIVESTMENT ACT CERTIFICATION

Design Builder certifies by signing this agreement that they are in compliance with the Iran Divestment Act, N.C.G.S. Chapter 147 Article 6E, and as of the date listed below, the Design Builder named in this agreement is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. Article 6E, §147-86.58. Design Builder shall not utilize any subcontractor found on the State Treasurer's Final Divestment List located on the State Treasurer's website at the address www.nctreasurer.com/Iran

11.1.3 BINDING EFFECT & CONTINUING OBLIGATION

This Agreement shall be binding upon the heirs, successors, assigns, agents, officials, employees, independent contractors, and subcontractors of the parties. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the Agreement.

11.1.4 CONFLICT OF INTEREST

No paid employee of the OWNER shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this agreement.

11.1.5 MINORITY BUSINESS ENTERPRISE (MBE) REQUIREMENTS

11.1.5.1 It is the policy of the Cape Fear Public Utility Authority that minority businesses as defined

in NCGS 143-128.2(g)(1)(2) and (3) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part by Authority funds under this agreement. Consequently, the Minority Business requirements of NCGS 143-128 apply to this contract.

11.1.5.2 The goals for participation by minority firms as subcontractors on this project have been set at 10% of the dollar value of the construction portion of the contract. Minority Business goals are accomplished via subcontracts performed by certified businesses. Subcontracts may include supplying of materials.

11.1.5.3 Design Builder must make a good faith effort, as defined in NCGS 143-128 to subcontract 10% of the work to certified minority business firms. This requirement does apply even if the Design Builder is a certified minority business contractor. This requirement does not apply if the firm will be performing all of the work with their own workforce and will not be subcontracting any of the work.

11.1.5.4 Nothing in these guidelines shall be construed to require the Design Builder or CFPUA to award contracts or subcontract to or make purchase of materials or equipment from minority-business contractors or minority business subcontractors who do not submit the lowest responsible, responsive bid or bids.

11.1.5.5 Design Builders must identify the minority business subcontractors that will be used on the project with corresponding total dollar value of the bid. Design builder must submit Affidavit C "Portion of the Work to be Performed by Minority Businesses" that includes a description of the portion of work to be executed by minority businesses, expressed as percentage of the total contract price, which is equal to or more than the applicable goal. Or Affidavit D "Good Faith Efforts" that includes a description of the portion of work to be executed by minority businesses, expressed as percentage of the total contract price, with documentation of Good Faith Effort if the percentage is not equal to the applicable goal. A listing of documentation that may be required to demonstrate the Design Builders good faith effort to meet the goals set forth in these provisions is listed on Affidavit D.

11.1.5.6 Only Minority Businesses that meet the minimum requirements as established by NCGS 143-128.2 and are certified by the North Carolina Department of Administration, Office for Historically Underutilized Business (HUB) certification will count towards the goal.

11.1.5.7 Minority Businesses identified by the Design Builder may not be substituted or replaced without just cause and only with the written approval of CFPUA. If a substitution is agreed to by CFPUA, the Design Builder must make a good faith effort to replace the Minority Business with another Minority Business. Please see NCGS 143-128.2(d).

11.1.6 ENVIRONMENTAL POLICY

Environmental Management: The Cape Fear Public Utility Authority has developed and implemented an ISO 14001 Environmental Management System (EMS), and is third party certified. Per the certification the Authority must ensure all persons doing work on their behalf is made aware of our Environmental Policy. The Environmental Policy can be found on the CFPUA website www.cfpua.org, click on the Departments tab, Environmental Management, and then choose Environmental Management. Contractor/Vendor certifies by signing this agreement that they have reviewed the Environmental Policy and understand their work contributes to the effectiveness of the EMS and may have a positive or negative impact on the Environment.

11.1.7 ABIDING BY GIFT POLICY

All entities contracted by the AUTHORITY shall abide by the AUTHORITY's policy on Gifts and Favors by not knowingly place any AUTHORITY employee in a position to violate the AUTHORITY's policy on Gifts and Favors, which is as follows:

Authority Policy - Gifts and Favors

Authority employees are to serve all persons fairly and equitably without regard to personal

or financial benefit. Therefore, all Authority employees are prohibited from accepting a non-monetary gift that exceeds a nominal value (\$25). Non-monetary gifts may include: advertising items or souvenirs, honoraria for participating in meetings, and meals at banquets. Non-monetary free meals not provided at banquets are prohibited from being accepted by Authority employees. Any non-monetary gift received by an Authority employee must be reported to their respective Department Head. All Authority employees are strictly prohibited from accepting any type of direct or implied cash or monetary payment, gift or reward. All Authority employees are strictly prohibited from soliciting or receiving any gift, reward, promise of reward, or anything of value, directly or indirectly, in exchange of, or consideration for, some action to be taken or not taken in the performance of the employee's duties. All Authority employees are strictly prohibited from disclosing confidential information concerning the property, government, or affairs of the Authority or using such information to advance the financial or other private interest of themselves or others.

11.1.8 ADVERTISING

No advertising, sales promotion, other materials or presentations of the Design-Builder will identify or reference this contract, or the Cape Fear Public Utility Authority's other events where the Design-Builder may be discussing or referencing either verbally or in writing CFPUA and/or the services or products covered under this contract. Exception may be taken to the above with regard to listing the Authority as a job history reference in responses to requests for proposals.

11.1.9 IMMUNITY NOT WAIVED

This agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the OWNER'S actual cost and neither party intends to waive its sovereign immunity by reason of this agreement.

11.1.10 NON-APPROPRIATION OF FUNDS

If the governing board does not appropriate the funding needed by CFPUA to make payments under this Agreement for a given fiscal year, CFPUA will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, CFPUA will promptly notify the DESIGN-BUILDER of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by CFPUA, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

11.1.11 PERSONNEL

It is mutually agreed that Design-Builder is an independent Design-Builder and not an agent or employee of the Owner, and as such the Design-Builder, or any employees thereof, or sub-contractor, or any employees thereof, shall not be entitled to any Owner employment benefits, such as, but not limited to, wages or salary, vacation, sick leave, insurance, workers' compensation, or pension and retirement benefits

[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder's performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties, by including the following language, agree that the Design-Builder is obligated to achieve such standards.]

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

~~[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the parties may want to delete such sections and include the following alternative dispute resolution clause.]~~

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 Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction ~~in the state in which the Project is located,~~ located in New Hanover County, North Carolina which shall be the sole forum for any litigation with respect to this Agreement or the subject matter thereof.

Article 12

Federal Requirements

12.1 Equal Employment Opportunity

12.1.1 As the Contract is a Federally Assisted Construction Contract exceeding \$10,000, during the performance of this Contract, any Design Builder selected shall be subject to the following conditions:

12.1.1.1 Design Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Design Builder will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

12.1.1.2 Design Builder will, in all solicitations or advertisements for employees placed by or on behalf of Design Builder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

12.1.1.3 Design Builder will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Design Builder's legal duty to furnish information.

12.1.1.4 Design Builder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Design Builder's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.1.1.5 Design Builder will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.1.1.6 Design Builder will furnish to the Administering Agency and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

12.1.1.7 In the event of Design Builder's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Design Builder may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed, and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.1.1.8 Design Builder will include the portion of the sentence immediately preceding paragraph A.1. of this Section II and the provisions of paragraphs A.1. through A.7. in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Design Builder will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event Design Builder becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Design Builder may request the United States to enter into such litigation to protect the interests of the United States.

Since the parties to the Contract are local government agencies, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

12.1.1.9 Owner agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Design Builder and any Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.

12.1.1.10 Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended by Executive Order 14173 of January 21, 2025, with a Design Builder debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Design Builder and any Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Owner agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for

appropriate legal proceedings.

12.2 Copeland “Anti-Kickback” Act

The Design Builder and any Subcontractors performing work under the Contract shall comply with 18 U.S.C. § 874. All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Design Builder or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Owner shall report all suspected or reported violations to Treasury.

12.3 Davis-Bacon Act

All suppliers, Design Builders, subcontractors, consultants, and sub-consultants must comply with Davis-Bacon Act, as amended (40 U.S.C. 3141–3148).When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

12.4 Contract Work Hours and Safety Standards Act

12.4.1 Overtime Requirements. No Design Builder or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

12.4.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in 12.4.1 (Overtime Requirements), above, Design Builder and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Design Builder and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in 12.4.1 (Overtime Requirements), above, in the sum of \$33 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 12.4.1 (Overtime Requirements), above.

12.4.3 Withholding for Unpaid Wages and Liquidated Damages. Owner shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold, or cause to be withheld, from any monies payable on account of work performed by Design Builder or Subcontractor under any such contract or any other federal contract with the same prime Design Builder, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Design Builder, such sums as may be determined to be necessary to satisfy any liabilities of Design Builder or Subcontractor for unpaid wages and liquidated damages as provided in 12.4.2 (Violation; Liability for Unpaid Wages; Liquidated Damages) of this section.

12.4.4 Subcontracts. The Design Builder or Subcontractor shall insert in any subcontract the clauses set forth in 12.4.1 through 12.4.4 and a clause requiring Subcontractors to include these clauses in any lower-tier Subcontracts. Design Builder shall be responsible for

compliance by any first-tier Subcontractor or lower-tier Subcontractor with the clauses set forth in 12.4.1 through 12.4.4.

12.4.5 Payroll and Records. Design Builder or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and last known address, telephone number, and email address of each such employee, Social Security number, correct classification(s) of work actually performed, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Design Builder or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Design Builder or Subcontractor will permit such representatives to interview employees during working hours on the job.

12.4.6 Exceptions. None of the requirements of Article 12 of this Contract shall apply if the Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

12.5 Rights to Inventions Made Under a Contract or Contract

12.5.1 The Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.

12.5.2 Unless otherwise provided by law, suppliers, Design Builders, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, Design Builders, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

12.5.3 Unless prohibited by North Carolina law, upon request by the Government, Owner will require the Design Builder to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Design Builder of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Design Builder shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Design Builder.

12.5.4 Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

12.6 Clean Air Act and Federal Water Pollution Control Act

12.6.1 Clean Air Act. Owner agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

The selected Design Builder shall report each violation to Owner and Owner will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office. The Design Builder shall include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

12.6.2 Federal Water Pollution Control Act. Owner agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The selected Design Builder shall report each violation to Owner and Owner will, in turn, report each violation as required to assure notification to Treasury and the appropriate Environmental Protection Agency Regional Office. The Design Builder shall include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

12.7 Debarment and Suspension

12.7.1 Due to its receipt of Fiscal Recovery Funds, Owner is a participant in a non-procurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, the Contract is a lower-tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).

12.7.2 If this Contract is a covered transaction as set forth in Section VIII.A., above, Design Builder shall certify as of the date of execution of the Contract that Design Builder, Design Builder's principals (defined at 2 C.F.R. § 180.995), and any affiliates (defined at 2 C.F.R. § 180.905) of both Design Builder and Design Builder's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) the Contract shall be void, (2) Owner shall not make any payments of federal financial assistance to Design Builder, and (3) Owner shall have no obligations to Design Builder under the Contract.

12.7.3 The Design Builder must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-tier covered transaction into which it enters. This certification is a material representation of fact relied upon by Owner and all liability arising from an erroneous representation shall be borne solely by the Design Builder.

12.7.4 If it is later determined that the Design Builder did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Owner the Government may pursue available remedies, including but not limited to suspension and/or debarment.

12.8 Byrd Anti-Lobbying Amendment

12.8.1 The Design Builder shall certify to Owner and shall cause each tier below it to certify to the tier directly above such tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. The selected Design Builder shall, and shall cause each tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from tier to tier up to the Owner, which will, in turn, forward the certification(s) to Treasury.

Design Builder shall cause the language of this 12.8.1 to be included in all Subcontracts. This certification is a material representation of fact upon which Owner has relied when entering into the Contract, and all liability arising from an erroneous representation shall be borne solely by the Design Builder.

12.8.2 Any Design Builder that bids or applies for a contract exceeding \$100,000 (including the Contract, if applicable) also must file with Owner the certification in Attachment 1 to this Contract, which is attached hereto and incorporated herein.

12.8.3 Any Subcontractor to the Contract with a Subcontract (at any tier) exceeding \$100,000 shall file with the tier above it the certification in Attachment 1 to this Contract, which is attached hereto and incorporated herein.

12.9 Procurement of Recovered Materials

12.9.1 12.9.2 shall apply if (1) the Contract involves the purchase of an item designated by the Environmental Protection Agency ("EPA") in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Owner's preceding fiscal year exceeded \$10,000.

12.9.2 All suppliers, Design Builders, and subcontractors, consultants, sub-consultants must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

12.9.3 All suppliers, Design Builders, and subcontractors, consultants, sub-consultants should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

12.10 Domestic Preferences for Procurements

12.10.1 For purposes of 12.10, the terms below are defined as follows:

12.10.1.1 "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.

12.10.1.2 "Manufactured Products" means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12.10.2 The selected Design Builder should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials Produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other Manufactured Products. The Design Builder shall cause any Subcontractors to include the requirements of 12.10 in any Subcontracts.

12.10.3 Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

12.11 Solicitation of Minority and Women-Owned Business Enterprises

12.11.1 If the selected Design Builder intends to let any Subcontracts, Owner shall require that the Design Builder (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.

12.11.2 For the purposes of Section 12.11, an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the N.C. General Statutes (hereinafter G.S.), and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

12.12 Access to Records

12.12.1 Owner, the selected Design Builder, and the parties to the Contract will provide the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Design Builder which are directly pertinent to this Contract to conduct audits or any other investigations. Any of the foregoing parties may reproduce such records by any means whatsoever or copy excerpts and transcriptions as reasonably needed.

12.12.2 Owner agrees to retain all records covered by 12.12 through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract.

12.13 Conflicts of Interest; Gifts and Favors

12.13.1 Owner will use Fiscal Recovery Funds to pay for the cost of this Contract and (2) the expenditure of Fiscal Recovery Funds is governed by the Owner's Conflict of Interest Policy, any Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, N.C.G.S. §§14-234(a)(1) and -234.3(a)).

12.13.2 The selected Design Builder shall certify to Owner that as of the date of execution of the Contract, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Owner or any party to the Contract involved in the selection, award, or administration of the Contract (each a "Covered Individual"); no member of a Covered Individual's immediate family; no partner of a Covered Individual; and no organization (including Design Builder) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Design Builder. Should the Design Builder obtain knowledge of any such interest, or any tangible personal benefit described in the preceding sentence after the date thereof, Design Builder shall promptly disclose the same to Owner in writing.

12.13.3 The selected Design Builder shall certify to Owner that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Owner. Should the Design Builder obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date thereof, Design Builder shall promptly disclose the same to Owner in writing.

12.14 Assurances of Compliance with Title VI of the Civil Rights Act of 1964

12.14.1 The selected Design Builder and any Subcontractor, or the successor, transferee, or assignee of the Design Builder or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

12.15 Other Non-Discrimination Statutes

12.15.1 Owner is bound by and agrees, to the extent applicable to the selected Design Builder, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:

12.5.1.1 The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

12.15.1.2 Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

12.15.1.3 The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

12.15.1.4 Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

12.16 Miscellaneous

12.16.1 *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Owner shall encourage the selected Design Builder to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

12.16.2 *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Owner shall encourage the selected Design Builder to adopt and enforce policies that ban text messaging while driving.

12.16.3 Drug-Free Workplace Regulations. All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.

12.16.4 Whistleblower Protection Act. An employee of Design Builder or any supplier, contractor, subcontractor, consultant, or sub-consultant must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

12.16.4 Hatch Act. All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12.16.5 Telecommunications Huawei / ZTE Ban. 2 C.F.R. 200.216 prohibits non-federal entities receiving federal grant funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system from the Chinese manufacturers Huawei and ZTE.

Modifications have been made to the original language of this Agreement and the General Conditions of Contract. Language that has been added is underlined to distinguish it from the original language. Language with a strike through it is delete from the original language. By initialing below, Owner and Design-Builder acknowledge and accept all modified language in this Agreement and General Conditions of Contract.

Initial of Owner_

Initial of Design-Builder

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.

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.

DESIGN-BUILDER:

ADDRESS:

DESIGN-BUILDERS SEAL:

ATTEST:

BY: _____

BY: _____

PRINTED: _____

PRINTED: _____

TITLE: _____

TITLE: _____

DESIGN-BUILDERS'S LICENSE NO.: _____

EXPIRATION DATE: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, certify that the corporation's Secretary, Assistant Secretary, or Trust Officer, Mr./Mrs./Ms. _____ personally came before me this day and acknowledged that s/he is the _____ of _____, a corporation, and that by authority duly given and as act of the corporation, the foregoing instrument was signed in its name by its President, Vice President, or Assistant Vice President, Mr./Mrs./Ms. _____, sealed with its Corporate Seal, and attested by him/herself as its Secretary, Assistant Secretary, or Trust Officer.

WITNESS my hand and official seal this the _____ day of _____, 20 _____.

Notary Public

My commission expires: _____

OWNER

CAPE FEAR PUBLIC UTILITY AUTHORITY SEAL:

235 Government Center Drive

Wilmington, North Carolina 28403

BY: _____

Jim Flechtner
Executive Director

ATTEST: _____

Donna S. Pope
Clerk to the Board

NORTH CAROLINA

NEW HANOVER COUNTY

I, _____ the undersigned Notary Public do hereby certify that Donna S. Pope personally came before me this date and acknowledged that she is the Clerk to the Board of Cape Fear Public Utility Authority, Wilmington, North Carolina, and that, by authority duly given and the act of the Board, the foregoing document was signed in its name by its Executive Director, sealed with its corporate seal, and attested by herself as its Clerk.

WITNESS my hand and official seal this the _____ day of _____, 20 ____.

Notary Public

My commission expires: _____

AUTHORITY ATTORNEY'S CERTIFICATION

This instrument has been reviewed and is approved as to form this the _____ day of _____, 20 ____.

Brittany Spell
Deputy Authority Attorney

AUTHORITY ACCOUNTANT'S CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act this the _____ day of _____, 20 ____.

John McLean
Chief Financial Officer



STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 535

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



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. Acknowledgement.** 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 (2010 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 the Design-Builder and the Design Consultant, and the Design-Builder and the 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. The Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with the 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 the 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 Article 8 of the Agreement. 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 more fully set forth in Article 8 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* (2010 Edition), as revised or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), as revised.

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*, as revised, 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*, as revised, the Basis of Design Documents are the Owner's Project Criteria (Attachment A), 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 the 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 the 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 the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, ~~licensed~~ design professional licensed in the state of North Carolina 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 licensed in the state of North Carolina who is not an employee of the Design Consultant, but is retained by the 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 *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.

~~1.2.8 *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, adverse weather conditions not reasonably anticipated, and other acts of God.~~

1.2.8 Force Majeure Events are those events that are beyond the control of both Design- Builder and Owner, including the events of fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as revised.

1.2.10 *GMP Exhibit* 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*, as revised, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* 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*, as revised.

1.2.12 *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.

1.2.13 *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.

1.2.14 *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 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. Owner's Project Criteria is attached hereto and incorporated by reference as Attachment A.

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

1.2.16 *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.

1.2.17 *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.

1.2.18 *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.

1.2.19 *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.

1.2.20 Provide when used in connection with services, material, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

1.2.21 Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

1.2.22 Underground Facilities All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

1.2.23 Soft Cost - Those costs not directly related to the construction, but are required to complete the Work and meet the requirements of this Agreement. These costs include, but are not limited to, architect's and engineer's fees, testing and reporting fees, the appraisal fee, attorney's fees, government fees, permitting fees, tapping fees, assessment fees, interest, and loan fees.

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 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 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).

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 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 as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates 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. Schedule of Values required by Section 6.1 herein shall be submitted at this meeting.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, ~~licensed~~ design professionals licensed in the state of North Carolina, employed by Design-Builder, or procured from qualified, independent ~~licensed~~ Design Consultants licensed in the state of North Carolina, 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.

2.3 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~~ highest standard of professional care and skill used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

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. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the 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.

2.4.2 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 meetings 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.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents 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.

2.4.4.1 Unless otherwise written, all work shall meet Owner's standards, which include CFPUA Standard Water & Sewer Details, CFPUA Technical Standards, and CFPUA Standard Specifications. It shall be the Design-Builders responsibility to ensure he/she is referring to the correct versions of these documents.

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. Owner shall not be responsible for monitoring Design-Builders compliance with any Legal Requirements.

2.5.1.1 Design-Builder will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. Design-Builder will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder.

2.5.1.2 If Design-Builder performs any Work knowing or having reason to know that it is contrary to Legal Requirements, Design-Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

2.5.1.3 Design-Builder will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, Design-Builder will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at OWNER'S option, in a termination or suspension of this agreement in whole or in part.

2.5.1.4 Design-Builder shall be aware of and abide by all Occupational Safety & Health Administration Laws and Regulations developed under the U.S. Department of Labor.

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 cost or time of 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.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, 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. Owner's Permit List is attached hereto and incorporated by reference as Attachment C.

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

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. Pursuant to North Carolina General Statutes Chapter 87, Design-Builder shall at all times during the performance of the Work maintain a valid North Carolina General Contractor's License.

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. 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.

2.7.4 Design-Builder assumes responsibility to Owner for ~~the proper performance of the Work of Subcontractors and any~~ all acts and omissions of the subcontractors, sub-subcontractors, suppliers, and other individuals in connection with such performance. performing or furnishing any of the Work just as Design-Builder is responsible for Design-Builder's own acts and omissions. 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; nor shall create any obligation on the part of the Owner to pay or see to the payment of any moneys due any Subcontractor, sub-subcontractors, Supplier, or other individual or entity except as may otherwise be required by Legal Requirements.

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, and other waste/spoil materials 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, other waste/spoil 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. Removal of such debris, trash, construction waste, and other waste/spoil materials shall conform to applicable Legal Requirements. At the completion of the Work Design-Builder shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

2.7.6.1 Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Legal Requirements, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2.7.7 Design-Builder shall at all times maintain good discipline and order at the Site. At no time during the course of construction shall any of the Design-Builders personnel, including Subcontractors and their personnel, behave in a rude or abusive manner on the Project Site, or in any of this Project's meetings on and offsite. This type of behavior shall be grounds for dismissal of such personnel from the Project.

2.7.8 No alcoholic beverages or narcotics of any description will be allowed on the Project Site at any time. Furthermore, anyone under the influence of alcohol or narcotics shall be removed from the Project Site immediately and shall permanently cease from performing any further Work on the Project.

2.7.9 Design-Builder shall be responsible for all erosion and sediment control practices, both on and offsite.

2.7.10 Design-Builder shall provide any and all construction stakeout services as required to complete the Work.

2.7.11 Until the entire Work is accepted by Owner, Contractor shall have responsible charge and care of the Work and of all equipment and material to be used therein, and shall bear the risk of injury, loss, or damage to any part of the Work by action of the elements or from any other cause, whether or not it occurred during execution of the work.

2.7.12 At Contractor's expense, Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work and any materials and equipment damaged or lost before the Work is complete. Contractor, at no additional expense to the Owner, shall provide suitable drainage and suitable structures as necessary to protect the Work or any portion thereof from damage.

2.7.13 Owner, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builders' safety procedures and programs so that they may comply therewith as applicable.

2.7.14 Work Hours: Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Design-Builder will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Owner.

2.7.14.1 No Work shall be done between the hours of 7:00 PM and 7:00 AM without the prior written permission of the Owner. However, emergency Work may be done at any hour without prior permission.

2.7.14.2 Work between the hours of 7:00 PM and 7:00 AM may be undertaken as a regular procedure with the prior written permission of the Owner. Such permission, however, may be revoked at any time by Owner, if Design-Builder fails to maintain adequate equipment and supervision for the proper execution and control of the Work during such hours.

2.7.15 Site Signage: Prior to any construction activity the Design-Builder shall erect sign(s) to inform the public work is in progress per sign detail that can be found at www.cfpua.org and per the following guidance:

2.7.15.1 The Design-Builder shall furnish and install construction sign(s) for identification of the project and shall be constructed in accordance with the following detail.

2.7.15.2 Construction sign(s) shall be located at or near the project site and amenable to public viewing. For work in right-of-ways, there shall be a sign on both ends of the work facing out to on-coming traffic. Sign locations shall be approved by the Owner prior to erection.

2.7.15.3 The sign shall be adequately supported with regard to site conditions and will be an adequate distance above the prevailing grade to permit public viewing.

2.7.15.4 The sign shall be constructed of 3.0 feet by 6.0 feet exterior type high density overlaid plywood or other sign material of equivalent quality and framed, as necessary to protect the sign from deterioration.

2.7.15.5 The sign lettering shall be of professional quality, black and either painted or vinyl on a matt white background. The CFPUA logo shall be strictly painted or vinyl to the color and proportion noted on the following detail.

2.7.15.6 Design-Builder may add information/logos to the sign with written permission.

2.7.15.7 A draft sign shall be rendered and reviewed and approved by Owner prior to production.

2.7.15.8 Sign(s) shall be maintained in good condition by the Design-Builder until completion of the construction project.

2.7.15.9 Sign(s) shall be removed and appropriately disposed of when the construction is complete and accepted by Owner.

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.

2.8.1.1 Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

2.8.1.2 Upon completion of the Work, all fences, signs and structures are to be restored to their original location and condition, unless shown differently on the Plans. The Design-Builder shall purchase new material, if necessary, to replace all materials damaged, lost, or destroyed. Landscape items, such as shrubs, bushes, and plantings, etc., shall be replaced as necessary to the satisfaction of the Owner.

2.8.1.3 Throughout the duration of the Project, the convenience and the protection of the public must be provided for, and interference held to a minimum.

2.8.1.4 The Design-Builder shall, at all times, conduct the Work in such a manner as to ensure the least practicable obstruction to public travel. The convenience of the general public and the residents along and adjacent to the area of the Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. Roads and streets must be kept open at all times or suitable detours provided. All detours and detour devices shall meet the Federal Highway Administration's (FHWA) guidelines, which can be found in the FHWA's Manual on Uniform Traffic Control Devices (MUTCD). Local law enforcement, fire, and rescue agencies shall be notified before any street is closed, and again as soon as it is opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

2.8.1.5 When necessary, the Design-Builder shall provide watchmen and appropriate lighting between twilight and sunrise, and shall erect and maintain barriers and all other necessary protection about the Work at its own expense. The Design-Builder shall take any other necessary precautions to protect life, limb, and property.

2.8.1.6 WORK NOTIFICATIONS: Design-Builder shall place a written notification on an accessible door believed to be most used of the residence/business within 48 hours and 72 hours of a disturbance to the property. Disturbance includes, but is not limited to, access to the property/main driveway, utility/telecommunication service disruption, and traffic detours in the area.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection, 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 shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. 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.

2.8.2.1 All damage, injury, or loss to any property referred to in General Conditions herein caused, directly or indirectly, in whole or in part, by Design-Builder, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder (except damage or loss attributable to the fault of or the acts of Owner or anyone employed by Owner for whose acts may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Design-Builder or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

2.8.2.2 Design-Builder's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Owner has issued a notice to Design-Builder in accordance with General Conditions herein that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

2.8.2.3 Design-Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Legal Requirements.

2.8.2.4 In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury, or loss.

2.8.2.5 The Design-Builder shall give the Owner written notice immediately, and in no instance more than 24 hours after the alleged emergency, if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents are required as a result. Changes in the Work or variations from the Contract Documents shall only be approved by Owner if a written Work Change Directive or Change Order regarding such changes or variations is issued.

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. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner not caused by Design-Builder, or others for whom the Design-Builder is responsible. Nothing in this warranty is intended to limit any manufacturer's warranty 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.

2.9.2 The Design-Builder shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship, or negligence for a period of twelve (12) months following the date of final acceptance of the Work or beneficial occupancy and shall replace such defective materials or workmanship without cost to OWNER.

2.9.3 Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The Design-Builder shall replace such defective equipment or materials, without cost to OWNER, within the manufacturer's warranty period.

2.9.4 Additionally, OWNER may bring an action for latent defects caused by the Design-Builder, which are hidden or not readily apparent to OWNER at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

2.9.5 Design-Builder shall obtain from all Suppliers and manufacturers any and all warranties and guarantees of such Suppliers and manufacturers, whether or not specifically required in other areas of the Contract Documents, and shall assign such warranties and guarantees to Owner. Design-Builder further agrees to perform the Work in such a manner to preserve any and all manufacturer's warranties. With respect thereto, Design-Builder shall render reasonable assistance to Owner when requested, in order to enable Owner to enforce such warranties and guarantees. The assignment of any warranties and guarantees shall not affect the correction period or any other provisions of these Contract Documents.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to be not unsatisfactory, faulty, or deficient in that it does not conform ~~be in conformance with~~ to the Contract Documents, or does not meet the requirements of any applicable inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment, 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. Design-Builder shall be responsible for all costs including redesign and reconstruction costs incurred by Owner to correct any of the Work.

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 period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.10.4 Suspension of the Work or the granting of an extension of time for any cause shall not relieve Design-Builder of its responsibilities for the Work specified herein Article 2.

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 Existing Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site; The Design-Builder will be responsible for interpretation of existing records and assume responsibility for any geotechnical or subsurface uncertainties. Further, the Design-Builder shall be responsible for any additional surveying and geotechnical exploration as required by their design;

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 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.

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 shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the 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 shall be entitled to self-perform any work related to the Work through separate contractors. 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 Any reports detailing hazardous conditions on the Project Site that have been obtained by the Owner shall be included in the Contract Documents. Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions ~~encountered~~ uncovered or revealed at the Site which was not shown or indicated in report(s) included in Contract Documents. Design-Builder shall be responsible for a Hazardous Condition created with any materials brought to the Site by Design-Builder, Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible.

4.1.1.1 Upon encountering any Hazardous Conditions, Design-Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop Work immediately in the affected area and duly notify Owner (and promptly thereafter confirm such notice in writing) 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~~ notice 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 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; Hazardous Condition shown or indicated in provided report(s) or identified in the Contract Documents are to be included within the scope of the Work. 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; Hazardous Condition shown or indicated in provided report(s) or identified in the Contract Documents are to be included within the scope of the Work.

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. If Design-Builder wishes to make a claim for an adjustment in the Contract Price or Contract Time, Design-Builder will make the claim in writing before proceeding with the Work.

4.3 Underground Facilities.

4.3.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner by the owners of such Underground Facilities, including Owner, or by others.

4.3.1.1 Owner shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

4.3.1.2 the cost of all of the following will be included in the Contract Price, and Design-Builder shall have full responsibility for:

4.3.1.2.1 reviewing and checking all such information and data;

4.3.1.2.2 locating all Underground Facilities shown or indicated in the Contract Documents;

4.3.1.2.3 coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

4.3.1.2.4 the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

4.3.2 Appropriate care shall be exercised when excavating with heavy equipment near all existing structures and utilities. This includes, but is not limited to utility lines, utility poles, drainage structures, stability cables, buildings, streets, bridges, and railroads. The Owner will not assume, nor accept, any responsibility for charges assessed by private or public utility companies, the North Carolina Department of Transportation, local municipalities, or any property owners for damages sustained to their property by virtue of action on the part of the Design-Builder, nor such charges as may be imposed for personnel of these parties to furnish field location of any facilities to temporarily shore these facilities during construction.

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~~ Article 5 herein. Coverage shall be secured from insurance companies ~~Authorized~~ licensed to do business in the state ~~in which the Project is located~~, of North Carolina and with ~~a minimum rating~~ an A.M. Best Rating of "A" or higher and acceptable to Owner. ~~set forth in the Agreement.~~

5.1.1.1 Commercial General Liability Insurance: The Design-Builder shall provide Commercial General Liability Insurance including coverage for the independent contractor operations, contractual liability assumed under the provisions of this Agreement, products/completed operations liability, and broad form property damage liability. Exclusions applicable to explosion, collapse, and underground hazards are

to be deleted when the Work involves these exposures. The policy shall provide liability limits at least in the amount listed in the table depending on the Contract Price:

Contract Price	Per Occurrence	Aggregate
Under \$500,000	\$1,000,000	\$2,000,000
\$500,000 and Above	\$3,000,000	\$5,000,000

The policy shall provide combined single limits, applicable to claims due to bodily injury and/or property damage evidenced by Endorsement #CG20 10/07/04. Owner shall be named as an additional insured under this policy.

The insurer shall agree to waive all rights of subrogation against the Cape Fear Public Utility Authority, its officers, officials, and employees for losses arising from work performed by the Design-Builder for Cape Fear Public Utility Authority.

5.1.1.2 Workers Compensation and Employers Liability Insurance: The Design-Builder shall provide Workers Compensation covering all of the Design-Builder's employees including officers, owners, and relatives to be engaged in the Work under this Agreement, providing the required statutory benefits under North Carolina Workers Compensation Law, as well as Employers Liability Insurance providing limits at least in the amount of \$500,000/\$500,000/\$500,000 applicable claims due to bodily injury by accident or disease and/or property damage. Owner shall be named as additional insured under this policy. The insurer shall agree to waive all rights of subrogation against the Cape Fear Public Utility Authority, its officers, officials, and employees for losses arising from work performed by the contractor for Cape Fear Public Utility Authority.

5.1.1.3 Automobile Liability Insurance: The Design-Builder shall provide Automobile Liability Insurance covering all owned, non-owned, and hired vehicles to be used upon site or in connection with the Work. Design-Builder shall provide liability limits at least in the amount of \$1,000,000 per occurrence combined single limits applicable to claims due to bodily injury and/or property damage. Owner shall be named as an additional insured under this policy.

5.1.1.4 Umbrella Liability Insurance: The Design-Builder shall provide Umbrella Liability Insurance as excess coverage above the underlying Employers Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance policies required by this Agreement. This coverage shall provide excess liability limits at least in the amount of \$3,000,000 per occurrence, combined single limits, applicable to claims arising from bodily injury, personal injury, and/or property damage. The parties named as additional insured under the primary underlying policies are to be included as additional insured under the Umbrella Liability Insurance coverage.

5.1.1.5 Builder's Risk Insurance OR Contractors Installation Floater: The Design-Builder shall provide and maintain either Builder's Risk Insurance or Contractors Installation Floater depending on the type of Work. Design-Builder shall consult Owner before purchasing either the Builder's Risk Insurance or the Contractors Installation Floater to determine which coverage the Owner will accept as part of this Agreement. The following are the MINIMUM requirements for both Builder's Risk Insurance and Contractors Installation Floater. Additional requirements specific to this Project may be stated in Article 11 of Agreement. It is the responsibility of the Design-Builder to purchase the minimum required insurance stated in Article 5 herein, as well as any other insurance it deems necessary to protect Design-Builder and the Owner.

5.1.1.5.1 Builder's Risk Insurance: The Design-Builder shall provide Builder's Risk Insurance written in the amount of one hundred percent (100%) of the

Contract Price with coverage applicable to all risks of direct physical loss or damage to buildings, structures, machinery, attachments, and all permanent fixtures forming a part of said building or structures during the course of construction to include coverage for flood, windstorm, Boiler and Machinery, earthquake, and collapse. The policy should include coverage for Soft Costs, specifically to include coverage for extra expense incurred by the Owner due to delay in occupancy resulting from damage to property covered by this policy. The Owner shall be named insured/loss payee as its interest may appear. The Design-Builder shall be responsible for payment of loss within any deductible applicable to this policy, changes, and advance payments or deferred payments.

5.1.1.5.2 Contractors Installation Floater: The Design-Builder shall provide and maintain Contractors Installation Floater or appropriate insurance protecting against loss or damage of the equipment to be installed. Coverage shall be written in the amount of one hundred percent (100%) of the value of the equipment and materials in force until accepted by the Owner. The coverage shall be written in the Design-Builder's name and shall protect the Owner as its interests may appear. Design-Builder shall be responsible for any loss within the deductible applicable to this insurance.

5.1.1.6 Subcontractors: The Design-Builder shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations employed by it to the same extent that Design-Builder would be responsible for these acts and omissions. The Design-Builder shall either (a) require each of his Subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage, and Vehicular Liability of the type and in the same amounts as specified in the preceding paragraph, or (b) insure the activities of his Subcontractors in his own policy.

5.1.1.7 Professional Liability: The DESIGN-BUILDER shall take out and maintain an architect's/Design-Builder's PROFESSIONAL LIABILITY INSURANCE policy, naming as insureds any professional individual or firm acting in the capacity of a DESIGN-BUILDER. This insurance shall provide liability insurance limits of not less than \$2,000,000.00 per claim for claims for damages arising out of the maintained for a period of two years following the date of acceptance of the project by the OWNER.

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,~~ At the time Design-Builder executes and submits Agreement to Owner, 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. The Certificates of Insurance shall indicate the type, amount, class of operations covered, applicable deductibles, effective date and expiration date of all policies. The Certificates of Insurance, naming the Owner as an additional insured, shall be further evidenced by an actual endorsement furnished to the Owner from the insurer within thirty (30) days of the signing of the Agreement between the Design-Builder and the Owner. The Design-Builder shall be solely responsible for securing Certificates of Insurance as therefore specified from all Subcontractors engaged in the Work. If any of the foregoing insurance coverages are required to remain in force after final payment are 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 the Design-Builder with reasonable promptness according to the 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.~~

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. The 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. The 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.~~

~~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 a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.~~

5.4.2 The Design-Builder shall provide both a Payment Bond and a Performance Bond wherein surety waives notice of any and all modifications, omissions, additions, changes, and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by the Bond shall not be impaired in any manner by reason or any such modifications, omissions, additions, changes, and advance payments or deferred payments. The surety bonds must set forth no requirements that suit be initiated prior to the time stipulated in applicable North Carolina Statutes of Limitation.

5.4.3 The Payment Bond and Performance Bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the Contract. The attorney-in-fact who executes the required bonds on behalf of the surety shall attach a certified current copy of his or her power of attorney indicating his or her authority to execute the bonds and the monetary limit of such power.

5.4.4 The Payment Bond and Performance Bond shall remain in effect until two years after the date when final payment becomes due.

5.4.5 The following are the requirements for both the Payment Bond and the Performance Bond for this Contract.

5.4.5.1 Payment Bond: The Design-Builder shall provide a Payment Bond in the amount of one hundred percent (100%) of the Contract Price, conditioned upon the prompt payment for all labor or materials for which a Design-Builder or subcontractor is liable. The Payment Bond shall be solely for the protection of the persons furnishing materials or performing labor for which a Design-Builder or subcontractor is liable.

5.4.5.2 Performance Bond: The Design-Builder shall provide a Performance Bond in the amount of one hundred percent (100%) of the Contract Price, conditioned upon the plans, specifications, and the Contract. The Performance Bond shall be solely for the protection of the Owner.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the 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 for all Work shall include (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work, and quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress

payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the 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,~~ No later than the 30th day of every month, 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.

6.2.1.1 Applications for Payment shall be accompanied with an accurate and complete updated schedule of operation or progress report, as applicable, and such other schedules and reports (including, without limitation, shop drawing schedule, procurement schedule, values of material, and equipment on hand) as Owner may require.

6.2.1.2 Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.

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 agreed to in writing, (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. When the Owner agrees to pay for stored material and/or equipment, payments for stored material and equipment shall be based only upon actual cost to Design-Builder, and shall not include overhead and profit to Design-Builder.

6.2.3 All discounts offered by Subcontractor, 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 herein 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.~~ undisputed amounts in an Application for Payment. 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.

6.3.3 Owner may withhold the whole or part of any payment if, the Owner has reasonable evidence that:

6.3.3.1 the Work has not progressed to the point indicated;

6.3.3.2 the quality of the Work is not in accordance with the Contract Documents;

6.3.3.3 the Work is defective, or completed Work has been damaged, requiring correction or replacement;

6.3.3.4 the Contract Price has been reduced by Change Orders;

6.3.3.5 Owner has been required to correct defective Work or complete Work in accordance with Section 2.10 herein;

6.3.3.6 Owner has actual knowledge of the occurrence of any of the events enumerated in Section 11.2 herein;

6.3.3.7 claims have been made against Owner on account of Design-Builder's performance or furnishing of the Work;

6.3.3.8 Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

6.3.3.9 there are other items entitling Owner to a set-off against the amount recommended;

6.3.3.10 Design-Builder has failed to make payment to Subcontractors, suppliers or labor;

6.3.3.11 Design-Builder has failed to make acceptable submittals in accordance with accepted schedules;

6.3.3.12 Design-Builder has failed to submit an updated schedule of operation or progress report, as required in Section 6.2 herein, with the Application for Payment;

6.3.3.13 the Work will not be completed within the Contract Times.

6.3.3.14 Design-Builder has caused damage to the Owner, separate contractor or a third party to whom the Owner is, or may be, liable;

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amounts in an Application for

~~Payment 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 pay Design Consultants and Subcontractors, in accordance with ~~its contractual obligations to such parties,~~ North Carolina General Statutes Section 143-134.1., 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 hereof.

6.6 Substantial Completion.

6.6.1 Substantial Completion shall occur when...TBD. 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.

6.6.4 Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will promptly make a final inspection with the Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

6.7 Final Payment.

6.7.1 After ~~receipt~~ Owners approval of a Final Application for Payment from Design-Builder, Owner shall make final payment ~~by the time required in the Agreement,~~ in accordance with North Carolina General Statutes Section 143-134.1., 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.

6.7.2.6 An affidavit stating all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied.

~~**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.~~

~~**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.~~

6.8 Taxes.

6.8.1 Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by the Design-Builder in accordance with Legal Requirements of the place of the Project which are applicable during the performance of the Work.

6.8.2 Pursuant to North Carolina General Statutes Section 105-164.14, the Owner is eligible for sales and use tax refunds on all materials that become a permanent part of the construction. The Design-Builder agrees to provide the Owner documentation which meets the requirements of Sales and Use Tax Regulation 42 regarding request for refund of sales and use taxes. Those requirements are outlined below:

6.8.2.1 All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the claimant during the fiscal year covered by the refund claim may be included in the claim.

6.8.2.2 Any local sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's sales and use tax has been paid, a breakdown must be attached to the claim for refund showing the amount of each

county's local tax separately.

6.8.2.3 To substantiate a refund claim for sales and use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its Design-Builder, the claimant (Owner) must secure from such Design-Builder certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales and/or use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the Design-Builder's warehouse stock and amount of state and local sales or use tax paid therein by the Design-Builder. Similar certified statements by its Subcontractors must be obtained by the Design-Builder and furnished to the claimant. Any local sales or use taxes included in the Design-Builder's statement must be shown separately from the State sales or use taxes. The Design-Builder's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such Design-Builder for use in performing the Contract which does not annex to, affix to, or in some manner become a part of the building or structure being erected, altered, or repaired for the governmental entities as defined by North Carolina General Statutes Section 105-164(c). Examples of property on which sales and use tax has been paid by Design-Builder and which should not be included in the Design-Builder's statement are scaffolding, forms of concrete, fuel for the operation of machinery and equipment, tools, equipment repair, parts and equipment rentals, blueprints, etc.

NOTE: The State and County of purchase MUST be stated on the statement.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

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 of violation of any patent or copyright.

~~7.2 Tax Claim Indemnification.~~

~~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.

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.~~

~~7.4.1 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 bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) 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 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 obligation set forth in Section 7.4.1 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.~~

~~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) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.~~

7.6 Indemnification.

7.6.1 To the fullest extent permitted by Laws and Regulations, Design-Builder shall hold harmless and indemnify the Authority, its officers, directors, members, partners, employees, of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of the obligations herein undertaken or resulting from the operations conducted, to the extent caused by any negligent act or omission of Design-Builder, any sub-consultant of Design-Builder, or any individual or entity employed by any of them to perform any of the Services or anyone for whose acts any of them may be liable.

7.6.2 The indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder or any Subcontractor under Workmen's Compensation Acts, Disability Benefit Acts or other employee benefits acts.

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 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, Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work with Contract Times. 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.

8.2.1.1 Time extensions for abnormal adverse weather delays shall be granted according to the number of days during the month when precipitation exceeds the historical average number of rain events of 0.1 inches of rainfall or greater, as established by the National Oceanic and Atmospheric Administration (NOAA). The evaluation of weather will be based on the total number of such days over the entire Contract Time.

8.2.1.2 The following is a table created from data obtained by the Climatological Reports prepared between September 2007 and August 2008 by the NOAA National Weather Service Weather Forecast Office of Melbourne, Florida for Wilmington, North Carolina. This table indicates the average number of calendar days per month with precipitation of 0.1 inches or more as determined between the years 1971 through 2000.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<u>8</u>	<u>6</u>	<u>7</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>7</u>	<u>6</u>	<u>5</u>	<u>5</u>	<u>6</u>

Delays caused by abnormal adverse weather shall warrant an extension of Contract Time as specified above; however, no adjustment of Contract Price shall be granted.

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, delays caused by Owner, other contractors or utility owners performing other work for Owner, or anyone for whom Owner is responsible, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price. provided, however, that the~~ In no event shall Design-Builder be entitled to an adjustment in the Contract Price based on causes beyond the control of Owner or Contractor. Contract Price shall not be adjusted for Force Majeure Events, unless otherwise provided in the Agreement.

8.2.3 Owner, and its officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

8.2.4 Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design-Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design-Builder, including but not limited to claims for delay due to adverse weather conditions not of an abnormal nature.

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).

9.2.1.1 Owner may, by Work Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. 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, if any, 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. Design-Builder will promptly proceed with the change in the work during those negotiations.

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. Owner may also order minor changes in the Work.

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. Such notice 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 the 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)~~ Ten (10) 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, the parties shall submit in writing a request for mediation to the American Arbitration Association 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~~, Construction Industry Mediation Rules of the American Arbitration Association in effect as of the effective date of the Agreement. ~~Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator’s schedule, the~~ Mediation shall commence within ~~ninety (90)~~ sixty (60) days of the submission of the dispute to mediation.

10.2.5 The following disputes are not subject to mediation:

10.2.5.1 A dispute seeking a non-monetary recovery; and

10.2.5.2 A dispute seeking a monetary recovery of \$15,000 or less.

10.2.6 The cost of mediation shall be divided between parties in the dispute.

10.2.7 In the event that mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction located in New Hanover County, North Carolina which shall be the sole forum for any litigation with respect to this Agreement or the subject matter thereof. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if an applicable statute of limitations may expire.

10.2.7.1 Each party shall be responsible for its own costs and expenses including attorneys’ fees and court costs incurred in the course of any such legal proceeding.

10.3 — Arbitration.

~~**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.~~

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 to Design-Builder, 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 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 for Cause

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 if Design-Builder makes a Claim therefore as provided in Article 9 .Design-Builder shall not be entitled to an adjustment of the Contract Price of any suspension of not more than sixty (60) consecutive days.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to perform the Work in accordance with the Contract Documents, including, but not limited to, (i) failure to provide a sufficient number of skilled workers, (ii) failure to supply the materials or equipment required by the Contract Documents, (iii) failure to 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 and surety 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 and surety 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 designs, drawings, materials, equipment, scaffolds, tools, appliances and other items, thereon, and Design-Builder's subcontracts, which have been purchased, or provided or contracted 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 reprocurement 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 Article 8 of the Agreement.

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

11.3.1.2 Owner's failure to pay amounts properly 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 (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (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 more than sixty (60) consecutive days, ~~or more than ninety (90) days during the duration of the Project~~, because of court order or other public authority, 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 (60) consecutive days, or more than ninety (90) 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 10 (ten) days written notice to Owner that it intends to terminate the Agreement ~~unless the problem cited is cured, or commenced to be cured, within seven (7) 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 (7) day period. If Owner, within such second seven (7) 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. from the Owner payment for the actual reasonable expenditures of the Design-Builder for all Work executed and for materials, equipment, tools, construction equipment, and machinery actually purchased or rented solely for the Work, less any salvage value of such items.

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, 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 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 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 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.~~

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 is defined as information which is as those functions and properties as defined in Chapter 132 of NC General Statutes, 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.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

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, or (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.

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.