

Standard Form of General Conditions of Contract Between Owner and Design-Builder (As Modified by the Parties)

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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 (Capitalized terms used in these General Conditions of Contract but not defined herein shall have the same meaning given to such terms in the Agreement).

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder (As Modified by the Parties)* (2024 Edition).

1.2.2 *Basis of Design Documents* are as follows: those documents specifically listed in the Proposal as being the "Basis of Design Documents."

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

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

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

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

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

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

1.2.9 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, government orders related to a public health condition, Abnormal Weather Conditions (as defined in Section 5.3.3.1.c. of the Agreement) not reasonably anticipated, and other acts of God.

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

1.2.11 *GMP Exhibit* means that exhibit, if any, attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder (As Modified by the Parties)* (2024 Edition), to the extent such exhibit is agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.12 *Proposal* means that proposal developed by Design-Builder in accordance with Section 1.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder (As Modified by the Parties)* (2024 Edition).

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

1.2.14 *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.

1.2.15 *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.

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

1.2.17 *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.

1.2.18 *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.

1.2.19 *Substantial Completion* or *Substantially Complete* means the date on which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. At a minimum, Substantial Completion of the Phase 2 Services shall require the following: acceptance of Work by Owner, passing all required inspections, and, to the extent applicable, issuance of final certificates of occupancy by the authority having jurisdiction over the Project.

1.2.20 *Work* is comprised of all Design-Builder's design, construction, and other services for Phase 1 Services and Phase 2 Services required by the Contract Documents, including, without limitation, procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents and performing any and all demolition and/or abatement activities as may be required by the Contract Documents.

1.3 Supplemental Definitions.

1.3.1 *Application for Payment* means the document prepared by Design-Builder, in a form acceptable to Owner, to request monthly progress payments or final payment, and which is to be accompanied by such supporting documentation as required by the Contract Documents. The Application for Payment form to be used on this Project is per City of Raleigh standards. The standard form to be used as a summary and signature sheet shall be provided by the City. Design-Builder shall use the City's standard computerized forms for providing detailed payment breakdown as an attachment to the summary sheet. Design-Builder shall also include as part of the Application

for Payment the "Certificate of the Contractor or His Duly Authorized Representative" to be provided by the City. Design-Builder shall utilize Owner's preferred project management software (the "Project Management Software"), to be communicated by Owner to Design-Builder upon execution of the Agreement, to upload each Application for Payment. Upon request by Owner, Design-Builder shall provide to Owner the names of the Design-Builder employees and Subcontractor employees who will need the Project Management Software licenses assigned to them during the Project.

1.3.2 *Change Order* is a document signed by Design-Builder and Owner and authorizes an addition, deletion, and/or other revision in the Work; an adjustment in the Contract Price, the GMP, and/or the Contract Time(s); and/or other revision to the Contract Documents, issued on or after execution of the Agreement. The Change Order form to be used on this Project is the City of Raleigh standard form to be provided by the City.

1.3.3 *Change Order Proposal* means a proposal, in a form acceptable to Owner, submitted by Design-Builder to request a change in the construction Work when (a) there are insufficient funds in the Owner's Contingency to cover the cost of an Owner-Requested Change and/or (b) the Owner-Requested Change requires an alteration to the Scheduled Date of Substantial Completion.

1.3.4 *City* means the City of Raleigh.

1.3.5 *Cost Change Proposal* means a proposal, in a form acceptable to Owner, submitted by Design-Builder to utilize the Design-Builder's Contingency or to respond to an Owner-Requested Change to utilize the Owner's Contingency. The Cost Change Proposal form to be used on this Project is the City of Raleigh standard form to be provided by the City. Design-Builder shall utilize the Project Management Software in the submission of all Cost Change Proposals.

1.3.6 *Design-Builder's Contingency* means a reserve amount set aside for Design-Builder's exclusive use for unanticipated costs incurred as described in greater detail in Section 6.6.2.1.4 of the Agreement.

1.3.7 *Key Personnel* includes the Project manager(s), superintendents(s), Subcontractors, and Design Consultants whom Design-Builder proposes to use for the Project's design and construction as shown in Section 2.1.5 of these General Conditions of Contract.

1.3.8 *Liquidated Damages* mean a monetary amount agreed upon by the parties payable by the Design-Builder to Owner for each calendar day the Project extends beyond the Scheduled Substantial Completion Date. This amount represents a genuine pre-estimate of Owner's anticipated losses due to Project delay and is intended as compensation for such losses, and not as a penalty.

1.3.9 *Reserved.*

1.3.10 *Reserved.*

1.3.11 *Notice of Violation* means a written notification from a governmental agency that Owner has violated a law or regulation that the agency has jurisdiction over. Notice will take the form used by the agency and may outline action to be taken by Owner to correct the violation and may include a monetary fine.

1.3.12 *Owner's Contingency* is an Owner's reserve amount set aside for scope modifications and additions at Owner's request.

1.3.13. *Phase 1 Services* means all design and preconstruction services performed by Design-Builder prior to Owner's acceptance of the Proposal pursuant to Section 1.6.2.2 of the Agreement. The Phase 1 Services are further described in Section 1.5.1 of the Agreement.

1.3.14. Phase 2 Services means all remaining design services and all procurement, construction, demolition, abatement, start-up, testing, and commissioning performed by Design-Builder after Owner's acceptance of the Proposal pursuant to Section 1.6.2.2 of the Agreement. The Phase 1 Services are further described in Section 1.5.2 of the Agreement.

1.3.15. Owner-Requested Change means a change in, addition to, and/or reduction of the construction Work requested by Owner. Owner shall first utilize the Owner's Contingency to fund an Owner-Requested Change, but if not enough funds are available in the Owner's Contingency to cover the cost of an Owner-Requested Change, then the Owner-Requested Change will necessitate an adjustment to the Contract Price and/or GMP. The document by which Design-Builder responds to an Owner-Requested Change when there are enough funds in the Owner's Contingency to cover the cost of the Owner-Requested Change is a Cost Change Proposal. In the event there are not enough funds in the Owner's Contingency to cover the cost of an Owner-Requested Change, and/or if the Owner-Requested Change requires an alteration to the Scheduled Date of Substantial Completion, then Design-Builder shall utilize a Change Order Proposal to respond to the Owner-Requested Change.

1.3.16 Small Tools mean tools and equipment with an individual cost of less than \$1,000.

1.3.17 Socially and Economically Disadvantaged Individual is as defined in 15 U.S.C. 637: "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities". "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged."

1.3.18 Tariff means any new, increased, or modified import duty, tax, or levy imposed by the United States federal government under the Harmonized Tariff Schedule of the United States (HTSUS) after the Effective Date of the Agreement.

1.3.19 Underground Facilities means all active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

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 Design-Builder's Contingency (if any); 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/or GMP and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response (the "Project Schedule"). The Project 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 Project Schedule shall be revised, maintained, updated, and provided to Owner every 30 days unless the conditions and progress of the Work require an earlier update due to potential delays. No schedule revision shall relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), unless such dates are adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project 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. Additional requirements for the Project Schedule are set forth in Sections 2.7.8 and 2.7.11.3 hereof.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 Design-Builder shall provide the Key Personnel as delineated below. Substitutions shall only be allowed with the prior written approval of Owner. Design-Builder will provide Owner with a written request for any substitution or replacement and stating the reason for the substitution or replacement, identification of the substitute or replacement Key Personnel and the qualifications and experience and references to demonstrate that substitute or replacement is equally or better qualified and experienced.

[Insert the names of Key Personnel and their titles from selected Proposer's SOQ.]

2.1.6 Design-Builder shall provide the preconstruction services described in Exhibit B of the Agreement as part of its Phase 1 Services and Phase 2 Services.

2.1.7 Design-Builder shall obtain prior written approval from Owner before it can substitute any Design-Build Team Member identified in Design-Builder's SOQ.

2.1.8 During the Phase 1 Services, Design-Builder shall:

2.1.8.1 Develop a Site Access and Logistics Plan ("Logistics Plan") that Design-Builder will implement to coordinate and manage the Site constraints and challenges including but limited to traffic and pedestrian control, access to Site, material and supplies delivery, laydown areas, safety considerations, etc. Design-Builder shall work with Owner to develop this Logistics Plan and Owner shall have right to review and comment on this Logistics Plan as it is being developed and finalized.

2.1.8.2 Develop an Acceptance Testing Plan in accordance with Exhibit B of the Agreement. Design-Builder shall work with Owner to develop this Acceptance Testing Plan and Owner shall have right to review and comment on this Acceptance Testing Plan as it is being developed and finalized.

2.1.8.3 Develop a Transition Plan that Design-Builder will implement to coordinate and manage the initial start-up and operations, training, Acceptance Testing turn-over to Owner of the Project and transition to Owner operations. Design-Builder shall work with Owner to

develop this Transition Plan and Owner shall have right to review and comment on this Transition Plan as it is being developed and finalized.

2.1.8.4 Develop and implement a Quality Assurance and Quality Control Plan ("QAQC Plan") for the design Work and construction Work. At all times, Design-Builder shall manage quality assurance and quality control on the Work to ensure that the design and construction comply with the Construction Documents. Design-Builder shall work with Owner to develop this QAQC Plan and Owner shall have right to review and comment on this QAQC Plan as it is being developed and finalized. Design-Builder shall support the activities of Owner with regards to its construction materials engineering, testing and inspection services, and the verification testing services.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering, and other design professional services, for the preparation of the required drawings, specifications, and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant. By executing the Agreement, Design-Builder warrants and certifies that each Design Consultant who is a member of the Design-Build Team, including without limitation Subconsultants with delegated design responsibility, was or will be selected upon demonstrated competence and qualification in a manner provided by N.C.G.S. 143-64.31.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder has identified its Design Consultants and Design Subconsultants in Section 2.1.5 hereof. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price, the GMP, and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable 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.

2.4.1.1 Design Submissions shall be consistent with Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By

submitting Design Submissions, Design-Builder represents to Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and/or GMP and within the Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or GMP, and/or the Contract Time(s); however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions of Contract and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1 hereof, 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 Project Schedule.

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

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

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

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

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare 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.

2.4.5 Early Work Packages.

2.4.5.1 Early work packages ("Early Work Packages") may be awarded by Design-Builder during the design period to facilitate the early preparation of the Site, purchase long lead time materials and equipment and otherwise accelerate certain portions of the Work in advance of the agreement between Owner and Design-Builder regarding the Proposal for any of the construction Work. These Early Work Packages will be ready for commencement of their construction before it is appropriate to arrive at an overall Contract Price and GMP (if applicable) for any of the construction Work. Early Work package shall be defined as a portion of Work that the parties agree should be executed during the design period.

2.4.5.2 Either Owner or Design-Builder may propose Early Work Packages to proceed prior to the time the Proposal for any of the construction Work is approved by Owner. Based upon the written agreement of the parties, Design-Builder may either perform, if selected by Owner as the successful bidder or proposer, or subcontract such Early Work Packages before the Proposal for any of the construction Work has been submitted and approved. The approved amount for the scope of work in any Early Work Package shall be included in the subsequent Proposal for any of the construction Work. Design-Builder's Fee for billing purposes for such Early Work Packages shall not exceed the pro rata portion of the fee that the Cost of the Work of the early Work package as performed bears to Owner's Budget.

2.4.5.3 Owner may choose to accelerate the completion of certain portions of the design Work so that some specific Early Work Packages may be awarded by Design-Builder prior to the completion of the remaining Construction Documents or acceptance by Owner of the Proposal for any of the construction Work. Design-Builder shall provide the documents necessary to procure and award any Early Work Packages. All Early Work Packages shall contain language which makes those subcontracts 100% assignable to Owner, at Owner's sole election, in the event the Agreement is terminated, and that the Subcontractors shall be obligated to accept that assignment if it should occur.

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

2.4.6 Record Drawings. Design-Builder shall maintain up-to-date record drawings throughout the Project. Record drawings shall be updated daily. Should Owner determine that record drawings are not being maintained properly, approval of future payment requests may be withheld.

2.5 Legal Requirements.

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

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

2.5.3 Design-Builder agrees to make itself aware of and shall comply with Legal Requirements applicable to the conduct of its business in performing the Work, including without limitation those of federal, state, and local agencies having jurisdiction and/or authority over the Project.

2.5.4 Stormwater Pollution Prevention.

2.5.4.1 Outdoor Washing Activities: Discharges from outdoor washing activities shall not be allowed to enter the stormwater system (stormwater pipes, catch basins, drainage ditches, rain gardens, and similar conveyances). Design-Builder must have adequate equipment and implement management practices to properly treat, contain, collect, and dispose of wash water runoff generated during washing activities. Proper disposal of collected wash water must be arranged prior to beginning Work.

2.5.4.2 Painting: Design-Builder shall not discharge into the stormwater system any wastes resulting from the cleaning of painting equipment or the removal of paint from structures. If solvents or other potentially hazardous products are used to clean painting equipment, the resulting wastewater may be hazardous and must be properly disposed of or recycled.

2.5.4.3 Concrete: Design-Builder shall not discharge concrete or any residue from rinsing equipment or trucks onto the ground or into the stormwater system. Owner shall designate a concrete chute and tool wash area at each facility. All concrete remaining in delivery trucks after completion of the Work shall not be discharged or rinsed from the trucks at the Site.

2.5.4.4 Waste Management: Design-Builder shall use waste bins/dumpsters that are leak proof (no holes or damage). All bins/dumpsters shall be covered and have drain plugs.

2.5.4.5 Chemicals and Fuels: Design-Builder shall provide containment and any other spill prevention necessary for all chemicals and fuels stored or used at the Site.

2.5.4.6 Seeding: Design-Builder must follow proper pesticide and fertilizer application methods as prescribed by industry standards and on product labels during seeding. If such products are spilled, Design-Builder must respond promptly to collect and properly dispose of the spilled product and clean up the impacted area.

2.5.4.7 Erosion: All land disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with local, state, and federal regulations.

2.5.5 Other Legal Requirements.

2.5.5.1 Design-Builder shall be responsible for preparing and conforming to the requirements of an approved sedimentation control plan; for complying with the rules and regulations of the Erosion Control Laws of the State of North Carolina, specifically the Sedimentation Pollution Control Act of 1973 (N.C.G.S. 113A), as amended; and for complying with the Legal Requirements of the local jurisdiction where the Project is located as it relates to land disturbing activities undertaken by Design-Builder. Design-Builder shall be responsible to Owner for any fines imposed on Owner as a result of Design-Builder's failure to comply with the above.

2.5.5.2 Design-Builder shall be responsible for conforming to the requirements of the N.C. Department of Transportation Encroachment Agreement, if attached to the Contract Documents.

2.5.5.3 Should Design-Builder cause Owner to receive a Notice of Violation from a governmental agency, Design-Builder shall pay any and all costs associated with the Notice of Violation within ten (10) days of receipt of written notification. Costs shall include, but not be limited to, the following:

1. Fines imposed on Owner by the agency;
2. Required legal newspaper publications concerning violation;
3. Required mailings to customers concerning notification of violation; and
4. Administrative and engineering costs associated with resolving the Notice of Violation.

2.5.5.4 Notice of Violation may include, but not be limited to, the following problems:

1. Sewage spills;
2. Inadequate erosion control measures; and
3. Equipment failure during the warranty period.

2.5.5.5 In the event of a sewage spill during construction, Design-Builder shall take the following steps as a minimum:

1. Take immediate action to contain the spill;
2. Notify Owner within 30 minutes of realizing a spill has occurred; and
3. Clean up the spill as directed by Owner, with no adjustment to the Contract Price, the GMP, and/or the Contract Time(s).

2.5.5.6 Design-Builder shall comply with Sections 11.1.1 and 11.1.2 of the Agreement.

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. Design-Builder shall obtain and pay all charges of utility owners for connections for providing permanent service to the Work and include such charges in the Contract Price and/or the GMP.

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

2.6.3 Design-Builder shall be responsible for compliance with the terms of any encroachment agreements and permits issued by federal, state, and/or local regulatory agencies. This responsibility may include generating and submitting any reports that may be required as a condition of the encroachment agreements and permits. All costs of such compliance shall be deemed included in the Contract Price and/or the GMP.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities,

and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder has identified its Subcontractors in Section 2.1.5 hereof. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price, the GMP (if applicable), and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

2.7.3.1 All Work performed for Design-Builder by a Subcontractor shall be pursuant to an appropriate agreement between Design-Builder and Subcontractor. The Subcontractor shall not commence Work until Design-Builder has obtained all insurance policies and bonds required by the Contract Documents.

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

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

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

2.7.7 Design-Builder shall assign or cause to be assigned a general superintendent for the Work to supervise all construction crews on site. The general superintendent shall be responsible for addressing any construction related issues from Owner and/or the authorities having jurisdiction over the Project.

2.7.8 Prior to commencing Phase 2 Services, Design-Builder shall update the Project Schedule to show graphically, by a detailed bar chart, critical path method, or other method acceptable to and approved by Owner, the projected progress of construction Work from start to finish including, without limitation, all testing, startup, commissioning, and all other steps necessary for delivery to Owner of all components of the Work for their intended purposes. Such updated Project Schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Agreement or Contract Price Amendment, as applicable. Upon commencement of Phase 2 Services, the Project Schedule shall be evaluated by Design-Builder not less than

monthly. An updated and corrected Project Schedule shall be submitted to Owner and shall show any rescheduling necessary to reflect the true progress of the Work. Updated Project Schedules shall be submitted monthly to Owner with Design-Builder's invoice or Application for Payment, and such submission shall be a condition precedent to Owner's obligation to make progress payments for construction Work. Notwithstanding anything to the contrary in the Contract Documents, Owner shall withhold progress payments until such time as the Project Schedule and any required update to the Project Schedule is received, evaluated, and approved.

2.7.9 Working 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 will be performed during regular working hours, 8:00 am through 5:00 pm Eastern Standard Time, Monday through Friday. Design-Builder will not perform Work on a Saturday, Sunday, or any legal holiday without Owner's prior written consent, which consent shall not be unreasonably withheld.

2.7.9.1 Overtime Work: If Design-Builder's Work requires inspection, as determined by Owner, more than 10 hours in a work day or 40 hours in a work week, Monday through Friday excluding holidays, or on the weekends, Design-Builder shall submit a written request to Owner five (5) working days prior to the scheduled Work. Design-Builder shall pay for the Resident Project Representative's time beyond the above hours at the rate of **\$[TBD] / hour.**

2.7.9.2 Nothing in this Section 2.7.9 shall prevent Design-Builder from working outside regular working hours when the Work will not require an inspector to be present. Such Work may include start up, clean up, seeding, painting (after the base surface has been approved by the inspector), and similar items. When Design-Builder desires to work outside regular working hours when the Work will not require an inspector to be present, Design-Builder shall submit a written request to Owner one (1) working day prior to the scheduled Work.

2.7.10 Testing and Inspections.

2.7.10.1 If applicable Legal Requirements require any Work to be specifically inspected, tested, and/or approved by some public body, Design-Builder shall assume full responsibility therefore, coordinate all such tests and inspections, pay all costs in connection therewith, and furnish Owner the required certificates of inspection, testing, and/or approval.

2.7.10.2 Owner reserves the right to independently perform, at its own expense, laboratory tests on random samples of material or performance tests on equipment delivered to the Site. These tests if made will be conducted in accordance with the appropriate industry standards. The entire shipment represented by a given sample, samples, or piece of equipment may be rejected on the basis of the failure of samples or pieces of equipment to meet specified test requirements. All rejected materials or equipment shall be removed from the Site, whether stored or installed in the Work, and the required replacement shall be made, with no increase in the Contract Price, the GMP, and/or Contract Time(s).

2.7.11 Record Keeping and Reporting.

2.7.11.1 Design-Builder shall arrange for and submit monthly (or other frequency as agreed to in writing by Owner) to Owner via uploads to the Project Management Software progress photos, progress reports, and test results in sufficient detail to properly record the progress of the construction Work.

2.7.11.2 Design-Builder shall maintain a daily log of construction summarizing the construction activities performed for each day that construction Work is in progress. This daily log shall note daily job-site weather conditions, Subcontractor Work force levels and equipment use, all Work performed, all meetings conducted, all inspections and quality control activities with any deficiencies observed or correction notice issued, all testing results, all material deliveries, all instances of environmental protection non-compliance, all changes, all field directives, all safety activities, incidents, and/or concerns, and any other information to accurately depict the construction Work performed on that date. Design-Builder shall upload daily logs and inspection reports to the Project Management Software not less than on a weekly basis.

2.7.11.3 Design-Builder shall provide a cost and resource loaded critical path method (CPM) schedule utilizing accepted standard computer-based software that is compatible with the Owner's Project Management Software. The CPM schedule shall be supported by detailed bid item cost that accurately total and reflect the progress shown for the associated schedule activities. The scheduling software shall allow for integration of all aspects of the Project and provide for coordination of all construction Work to be performed. The scheduling software used by the CMAR shall be capable of producing and coordinating logic developed network diagrams and tabular format reports.

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 ("Safety Representative"). Unless

otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors, and others as applicable.

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

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

2.8.4 When tasks (including operating valves, lock out – tag out, etc.) must be accomplished by Owner's staff to allow Design-Builder to perform or continue its Work, Design-Builder shall independently verify and confirm the performance of the tasks prior to performing the impacted Work.

2.8.5 If there are more than two construction crews performing Work under one contract, Design-Builder shall assign a general superintendent to the Project to supervise all construction crews on Site. The general superintendent shall be responsible for addressing any construction related issues from Owner and/or the governmental agencies having jurisdiction over the Work and the Project.

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 Owner's abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty or extended warranty expressly provided by Design-Builder or its Subcontractors that provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including, without limitation, that part of the Work subject to Section 2.9 hereof, within a period of one year from the date Substantial Completion of the Work or any portion of the Work is achieved, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal, or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents,

may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

2.11 Damage to Property; Interruption of Work by Third Parties

2.11.1 Design-Builder shall be responsible for remedying damage, injury, or loss to any property damaged during its performance of the Work as follows:

2.11.1.1 To the fullest extent allowed by law, Design-Builder shall remedy at its own expense any and all damage, injury, or loss to any property arising out of, or resulting from the sole negligence of Design-Builder, Design-Builder's agents, Design-Builder's employees, and/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. Design-Builder's obligations under this Section 2.11.1.1 shall survive the termination, completion, or expiration of the Agreement.

2.11.1.2 To the fullest extent allowed by law, Design-Builder shall remedy at its own expense any and all damage, injury, or loss to any property arising out of, resulting from, or in connection with the execution of the Work provided for in this Agreement when the Fault of Design-Builder or its Derivative Parties is a proximate cause of such damage, injury, or loss. For the purposes of this section, the terms "Fault" and "Derivative Parties" shall have the same meaning as that set forth in Section 7.1.6 hereof. If Design-Builder or its Derivative Parties damage(s), delay(s), disrupt(s), or interfere(s) with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Design-Builder's or its Derivative Parties' failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder's or its Derivative Parties' action(s), inaction(s), or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction. In addition, and to the maximum extent permitted by law, Design-Builder's indemnity, defense, and hold harmless obligations to the Indemnified Parties (as defined in Section 7.1.1 hereof) under Article 7 hereof shall apply as to any and all Losses, liabilities, damages, expenses and costs arising out of, resulting from, or in connection with any and all claims brought by any such other contractor or utility owner against one or more of the Indemnified Parties that arise out of or relate to any such damage, delay, disruption or interference when the Fault of Design-Builder or its Derivative Parties is a proximate cause of the Losses, liabilities, damages, expenses, and costs so indemnified. Provided, however, nothing herein shall require Design-Builder to indemnify the Indemnified Parties against any such claims arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties. Design-Builder's obligations under this Section 2.11.1.2, including its indemnity, defense, and hold harmless obligations, shall survive the termination, completion, or expiration of the Agreement.

2.12 Taxes.

2.12.1 Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Legal Requirements of the place of the Project which

are applicable during the performance of the Work. Procedures for reporting sales tax are included in Section 7.6 of the Agreement.

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 Project 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 To the extent available and requested by Design-Builder, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines; and

3.2.1.2 To the extent available and requested by Design-Builder, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site; and

3.2.1.3 To the extent available and requested by Design-Builder, 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; and

3.2.1.4 To the extent available and requested by Design-Builder, a legal description of the Site; and

3.2.1.5 To the extent available and requested by Design-Builder, record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available and requested by Design-Builder, 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 The Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act, codified at N.C.G.S. 159-7 *et seq.*

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources.

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.

3.4.2 No official of Owner or Owner's Representative, who is authorized in such capacity and on behalf of Owner to negotiate, make, accept, or approve or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested personally in the Agreement or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for Owner, who is authorized in such capacity and on behalf of Owner to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in the Agreement or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

3.5 Government Approvals and Permits.

3.5.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges, and inspection fees associated with the Work.

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 reserves the right to retain such other additional consultants and/or separate contractors as it deems appropriate. Design-Builder agrees to cooperate with, be responsible to, and coordinate with all of Owner's consultants and 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. If the proper execution or results of any part of Design-Builder's Work depends upon work performed by separate contractors, Design-Builder shall inspect such other work and within seven days report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Design-Builder's Work.

3.7 Owner Provided Inspection Services.

3.7.1 Owner may provide inspection services, at Owner's own expense. Owner's inspection services, in no way, alleviate Design-Builder from completing the construction of or certifying the Project consistent with the Contract Documents. Final inspection and acceptance of the Work is to

take place at the completion of the entire Work under the Contract Documents, and any inspection or acceptance of materials and workmanship at the mills, shops, or elsewhere to facilitate the progress of the Work, or payment of monthly payment applications of Work done, shall not preclude rejection of such materials or workmanship thereafter if same be found unsuitable or not in complete accord with the Contract Documents.

3.8 Owner's Right to Reject Work.

3.8.1 At any time during the progress of the Work and up to the date of final acceptance, Owner shall have the right to reject any Work which does not conform to the requirements of the Contract Documents, even though such Work has been previously inspected and paid for. Any omissions or failure on the part of Owner to disapprove or reject any Work or materials at the time of inspection shall not be construed as an acceptance of any defective Work or materials.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Design-Builder shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Design-Builder 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 Design-Builder 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 Design Builder's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless otherwise set forth hereunder, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price, GMP, 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 Intentionally omitted.

4.1.6 Owner shall not be responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors, or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend, and hold harmless the Indemnified Parties 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. To the maximum extent permitted by law, Design-Builder's indemnity, defense and hold harmless obligations to the Indemnified Parties under Article 7 hereof shall apply as to any and all Losses, liabilities, damages, expenses and costs caused by, arising out of, resulting from, or in connection with Design-Builder's or its Derivative Parties' failure to control, contain, or remove a Hazardous Condition brought to the Site by Design-Builder or its Derivative Parties, or to a Hazardous Condition created by Design-

Builder or its Derivative Parties when the Fault of Design-Builder or its Derivative Parties is a proximate cause of the Losses, liabilities, damages, expenses and costs so indemnified. Provided, however, nothing herein shall require Design-Builder to indemnify the Indemnified Parties against any such Losses, liabilities, damages, expenses and costs arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties. Design-Builder's indemnity, defense, and hold harmless obligations under this Section 4.1.6 shall survive the termination, completion, or expiration of the Agreement

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 GMP 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; provided, however, that if the purported Differing Site Condition could have been discovered by Design-Builder through a diligent surface and/or subsurface Site inspection, as required by Section 4.2.3 hereof, then no adjustments to the Contract Price, the GMP, and/or Contract Time(s) shall be made.

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.

4.2.3 Design-Builder shall be responsible for the location and verification of all utilities, both public and private, whether above-ground or underground, within the Site prior to construction and determine which utilities may be in conflict with the Work. Design-Builder shall notify Owner in writing of any such conflicts discovered by Design-Builder. Design-Builder shall also attend meetings with Owner and utility company representatives, as appropriate, to discuss potential and/or existing utility conflicts. Design-Builder shall be responsible for performing diligent surface and subsurface Site investigations to familiarize itself with all existing Site conditions and Underground Facilities.

4.2.4 Design-Builder's Responsibilities for Underground Facilities: Unless it is otherwise expressly provided in the Contract Documents, the cost of all of the following shall be included in the Contract Price and/or GMP, and Design-Builder shall have full responsibility for:

4.2.4.1 reviewing and checking all information and data regarding existing Underground Facilities at the Site;

4.2.4.2 complying with applicable damage prevention Legal Requirements;

4.2.4.3 verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

4.2.4.4. coordination of the Work with the owners (including Owner) of such Underground Facilities during construction;

4.2.4.5 the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work;

4.2.4.6 following the North Carolina General Statutes, Chapter 87, Article 8 Underground Damage Prevention;

4.2.4.7 notifying owners of Underground Facilities prior to start of Work;

4.2.4.8 investigating ahead of the Work to verify the existence of Underground Facilities;

4.2.4.9 assuming risks and repairing damage caused by the Work to existing Underground Facilities, whether indicated or not in the Contract Documents. Repairs to Underground Facilities shall be done to the satisfaction of the Underground Facility owner. Underground Facility owner reserves the right to repair damage by Design-Builder to their Underground Facilities. If the owner exercises this right, the owner's cost of this Work shall be deducted from the compensation that might otherwise be due Design-Builder;

4.2.4.10 uncovering Underground Facilities, with that owner's approval, that are located within the Work as necessary for Owner to determine the requirements for any required change in the Work;

4.2.4.11 unforeseen Underground Facilities, including Underground Facilities not shown on any of the documents furnished pursuant to Section 3.2.1 hereof. Owner assumes no responsibility for the locations of Underground Facilities shown or not shown. There will be no compensation for "lost time" due to unforeseen utilities. If existing Underground Facilities require change(s) to the Work, Design-Builder shall provide a Cost Change Proposal to utilize the Design-Builder's Contingency consistent with the requirements of Section 9.1 hereof.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

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

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

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief. The obligations set forth in this Section 5.1.3 are in furtherance of, and not to the exclusion of, the requirements set forth in Exhibit F – Design-Builder's Insurance Requirements.

5.2 Owner's Liability Insurance.

5.2.1 Intentionally omitted.

5.3 Owner's Property Insurance.

5.3.1 Intentionally omitted.

5.3.2 Intentionally omitted.

5.3.3 Intentionally omitted.

5.3.4 Intentionally omitted.

5.3.5 Intentionally omitted.

5.4 Bonds and Other Performance Security.

5.4.1 Design-Builder shall provide a performance bond and payment bond to Owner in accordance with the provisions of Article 3 of Chapter 44A of the North Carolina General Statutes and the requirements of Section 10.2 of the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in compliance with all applicable Legal Requirements and shall be in a form satisfactory to Owner. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. The surety shall be a company qualified and registered to conduct business in the State of North Carolina. If the surety on any bond furnished by Design-Builder is declared bankrupt or becomes insolvent or its right to do business in the State of North Carolina is revoked, Design-Builder shall within five (5) days thereafter substitute another.

Article 6

Payment

6.1 Schedule of Values.

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

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

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval, through Owner's Project Management Software, its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. Monthly progress payment requests shall include the percentage of the total amount of the Contract Price and/or GMP which has been completed from the start-up of the Project to and including the last day of the preceding month, or other mutually agreed upon day of the month. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents (including, without limitation, Section 6.2.7 hereof) and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) major equipment items stored off-site are stored in a bonded warehouse and properly maintained during storage; (ii) equipment or materials stored on the Site are properly stored, protected, and maintained; (iii) the equipment and materials are protected by suitable insurance; (iv) Design-Builder submits evidence that payment has been made for materials or equipment properly stored; and (v) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

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

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

6.2.5 Design-Builder shall furnish to the Owner's Representative an accurate itemized statement of North Carolina Sales Taxes paid on materials, supplies, equipment, and other items charged to this Agreement, and otherwise fully comply with the "Procedure for Reporting North Carolina Sales Tax Expenditures." A sales tax form must be submitted even if there is no sales tax incurred. The procedure for reporting North Carolina sales tax expenditures is provided in Exhibit E of the Agreement.

6.2.6 Design-Builder shall submit a schedule of values that allocates the Contract Price and/or GMP among the various portions of the construction Work, provided that Design-Builder's Fee shall be shown as a separate line item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This schedule of values, unless objected to by Owner in writing, shall be used as a basis for reviewing Design-Builder's Applications for Payment. Owner may also use the Project Schedule when reviewing Design-Builder's Applications for Payment.

6.2.7 Applications for Payment shall be accompanied by such data and supporting evidence as Owner may require, including, but not limited to, items as follows:

- (1). Reserved.
- (2). Evidence of daily and weekly progress reports of construction provided.
- (3). Lien and/or payment releases.
- (4). Progress photos for the payment period.
- (5). Copies of any building code or regulatory permits or required licenses obtained during the month.
- (6). Updated Project Schedule and updated schedule of values.
- (7). New or updated insurance certificates as may be required.
- (8). Bonding as may be required for Subcontractors.
- (9). Updated Change Order register, Request for Information register, Construction

Deficiency Notice register, and submittal log register as may be required.

- (10). Sales and use tax reports.
- (11). Field testing documents as may be required.
- (12). _____LEED documents as required.
- (13). Commissioning documents as required.
- (14). Environmental inspection documents as required.
- (15). Evidence of updated as-built drawings as required.
- (16). Other data or supporting evidence as may be required.

All such data and supporting evidence shall be submitted to Owner via upload to Owner's Project Management Software.

6.2.8 If the Contract Price is based upon a GMP, then with each Application for Payment for construction Work, Design-Builder shall submit transaction summaries, certified payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by Owner to demonstrate that cash disbursements already made by Design-Builder on account of Cost of the Work and general conditions equal or exceed progress payments already received by Design-Builder, less (i) that portion of those payments attributable to Design-Builder's Fee, plus (ii) payrolls and costs for the period covered by the present Application for Payment.

6.3 Withholding of Payments.

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

6.3.1.1 the Work is defective, requiring correction or replacement;

6.3.1.2 the Contract Price and/or GMP has been reduced by Change Orders;

6.3.1.3 Owner has been required to correct defective Work, or has accepted defective Work;

6.3.1.4 Owner has been required to remove or remediate a Hazardous Condition for which Design-Builder and/or its Derivative Parties is responsible;

6.3.1.5 Owner has actual knowledge of the occurrence of any of the events that would constitute a default by Design-Builder and therefore justify termination for cause under the Contract Documents;

6.3.1.6 The Work will not be completed by the Substantial Completion Date, entitling Owner to impose Liquidated Damages;

6.3.1.7 Sedimentation and erosion control are determined to be unsatisfactory or unacceptable. A deduction of up to 10% of the payment amount for bid items that include sedimentation and erosion control installed during the payment period may be withheld in order to ensure remediation of the unsatisfactory or unacceptable Work. Upon remediation, Design-Builder may receive payment for the deduction in a subsequent Application for Payment.

6.3.1.8 Seeding and mulching are determined to be unsatisfactory or unacceptable. A deduction of up to 20% of the payment amount for bid items that include seeding and mulching installed during the payment period may be withheld in order to ensure remediation of the unsatisfactory or unacceptable Work. Upon remediation, Design-Builder may receive payment for the deduction in a subsequent Application for Payment; or.

6.3.1.9 Records (as defined in Section 13.12.2 hereof) are not maintained satisfactorily and in accordance with the Contract Documents. Payment requests shall not be approved until the deficiencies are satisfactorily corrected.

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 thirty (30) days of Owner's approval of the undisputed amounts in the Application for Payment.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder shall pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their Work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder shall indemnify, defend, and hold the Indemnified Parties harmless against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the entire 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 ("punch list") that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

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

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

6.7 Final Payment.

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

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

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

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

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

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

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

6.7.3 Owner shall set off against the final payment any sum to which Owner is entitled pursuant to Section 6.3.1 hereof, approve the Final Application for Payment as revised, and tender the resulting balance due to Design-Builder within thirty (30) days of Owner's approval of the revised Final Application for Payment.

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 hereof 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. The intent of this Section 6.7.4 is to clarify Design-Builder's responsibility to repair deficiencies in the Work regardless whether such deficiencies are characterized as punch list or warranty Work. Nothing contained in this Section 6.7.4 limits Owner's right to bring a claim against Design-Builder related to deficiencies in the Work outside of any warranty period set forth in the Contract Documents.

Article 7

Indemnification

7.1 Design-Builder's Indemnification Obligations

7.1.1 To the fullest extent allowed by law, Design-Builder shall indemnify, defend, and hold harmless Owner, its officers, officials, employees, agents, or indemnities (collectively called "Indemnified Parties") from and against those Losses, liabilities, damages, and costs proximately caused by, arising out of, or resulting from the sole negligence of Design-Builder, Design-Builder's agents, or Design-Builder's employees.

7.1.2 In matters other than those covered by Section 7.1.1. above, and to the fullest extent allowed by law, Design-Builder shall indemnify, defend, and hold harmless the Indemnified Parties from and against those Losses, liabilities, damages, and costs caused by, arising out of, resulting from, or in connection with the execution of the Work provided for in this Agreement when the Fault of Design-Builder or its Derivative Parties is a proximate cause of the Loss, liability, damage, or expense indemnified.

7.1.3 Costs and expenses shall include attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the Indemnified Parties to defend against third-party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of any of the Indemnified Parties by law or by contract, only if the Fault of Design-Builder or its Derivative Parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified.

7.1.4 Only to the extent provided pursuant to a policy of insurance, Design-Builder shall defend the Indemnified Parties against claims alleged in any court, tribunal, or alternative dispute resolution procedure if the Fault of Design-Builder or its Derivative Parties is a proximate cause of such claims.

7.1.5 Design-Builder's duty to indemnify, defend, and hold harmless described hereinabove shall survive the termination, completion, or expiration of the Agreement.

7.1.6 Definitions:

7.1.6.1 The term "Fault" as used in the Contract Documents shall mean any breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violation of applicable statutes or regulations.

7.1.6.2 The term "Loss" or "Losses" as used in the Contract Documents shall include, but not be limited to, fines, penalties, and/or judgments issued or levied by any local, state, or federal governmental entity.

7.1.6.3 The term "Derivative Parties" as used in the Contract Documents shall mean any of Design-Builder's Subconsultants, Subcontractors, agents, employees, or other persons or entities for which Design-Builder may be liable or responsible as a result of any statutory, tort, or contractual duty.

7.1.7 Patent and Copyright Infringement. Design-Builder's indemnity, defense, and hold harmless obligations to the Indemnified Parties shall apply as to any and all Losses, liabilities, damages, expenses and costs caused by, arising out of, resulting from, or in connection with any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Agreement when the Fault of Design-Builder or its Derivative Parties is a proximate cause of the Losses, liabilities, damages, expenses and costs so indemnified. Provided, however, nothing herein shall require Design-Builder to indemnify the Indemnified Parties against

any such Losses, liabilities, damages, expenses and costs arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties. Design-Builder's indemnity, defense, and hold harmless obligations under this Section 7.1.7 shall survive the termination, completion, or expiration of the Agreement.

7.2 Tax Claim Indemnification.

7.2.1 Intentionally omitted.

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 the Indemnified Parties from any claims or mechanic's liens brought against one or more of the Indemnified Parties 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. Design-Builder's indemnity, defense, and hold harmless obligations in this Section 7.3.1 shall survive the termination, completion, or expiration of the Agreement.

7.4 Design-Builder's General Indemnification.

7.4.1 Intentionally omitted.

7.4.2 Intentionally omitted.

7.4.3 Intentionally omitted.

7.5 Owner's General Indemnification.

7.5.1 Intentionally omitted.

7.6 Limited Recourse.

7.6.1 Intentionally omitted.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be

reasonably extended by Change Order, which must first be approved by Owner's governing body as required by Section 9.1.1 hereof. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price and/or GMP, but only to the extent the progress of the Work is impacted due to any act, omission, or failure by Owner, its agents, or separate contractors that directly delays Design-Builder on the critical path in the performance of the construction Work. Under no circumstances shall the Contract Price and/or GMP be adjusted for Force Majeure Events, minor changes in the Work, acts of third parties not under Owner's control, Differing Site Conditions, Hazardous Conditions, or governmental actions for which Owner is not responsible under any circumstances. In such cases, and to the extent any such event exceeds ten (10) calendar days, the Design-Builder may utilize the Design-Builder's Contingency to cover the direct additional field costs and expenses that the Design-Builder can demonstrate it reasonably and actually incurred as a result of such event. Notwithstanding the preceding sentence, Abnormal Weather Conditions shall not entitle Design-Builder to draw from the Design-Builder's Contingency under any circumstances.

8.2.3 Extensions to the Contract Time(s) shall only be granted to the extent Design-Builder substantiates delay to the Project Schedule's critical path. Only delays that extend the Project's Scheduled Substantial Completion Date and for which Design-Builder bears no responsibility shall warrant an increase in the Contract Time(s).

8.2.4 Owner and Design-Builder agree that the Agreement contemplates the potential apportionment of Project delay, such that the finder of fact in any judicial proceeding that may be required to resolve a dispute concerning Project delay may (a) attempt to apportion the delay between or among those entities it concludes are responsible for the delay and (b) award Owner Liquidated Damages for inexcusable delay caused by Design-Builder even if Design-Builder establishes that Owner should be apportioned some responsibility for Project delay.

8.2.5 Owner and Design-Builder agree that the Agreement does not contemplate recovery of alleged extended or unabsorbed home office overhead costs on account of Owner-caused delay. Under no circumstances shall Design-Builder be entitled to recover from Owner any alleged extended home office overhead costs or unabsorbed home office overhead under the *Eichleay* formula or any other formula. By executing the Agreement, Design-Builder waives (a) claims for alleged extended home office overhead costs and unabsorbed home office overhead costs under the *Eichleay* formula and any other computation and (b) claims for any and all consequential damages, including, without limitation, alleged damages for extended and unabsorbed home office overhead; losses of financing, business, and/or reputation; lost bonding capacity; and loss of profit, except anticipated profit arising directly from the Work.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders And Cost Change Proposals.

9.1.1 Owner, at any time, and without invalidating the Agreement, may direct changes be made in the Work covered by the Agreement, including but not limited to changes:

9.1.1.1 in Design-Builder's Phase 1 Services, Phase 2 Services, and/or the Project scope of Work;

9.1.1.2 in the specifications, drawings, and other Construction Documents;

9.1.1.3 in the sequence, method, or manner of performance of the construction Work;

9.1.1.4 in Owner-furnished facilities, equipment, materials, services or Site; and/or

9.1.1.5 directing acceleration in the performance of the construction Work.

Furthermore, it is understood and agreed that refinement and detailing may be accomplished from time-to-time with respect to the drawings, specifications, and other Construction Documents. It is further understood and agreed that any increase to the Contract Price, GMP, and/or Contract Time(s) shall require the prior approval of Owner's governing body before becoming effective.

9.1.2 No adjustment in the Contract Price, GMP, and/or Contract Time(s) shall be made unless a change, refinement, or detailing results in an actual increase or decrease in the scope of Work to be performed and/or a material modification to the Project's design, all as determined by Owner in its sole discretion.

9.1.3 Owner's Representative has the authority to order minor changes in the construction Work not inconsistent with the intent of the Construction Documents and not involving an adjustment in the Contract Price, GMP, and/or Contract Time(s). Such changes shall be affected by written order and shall be binding on Owner and Design-Builder. Design-Builder shall not perform any changes in the construction Work, including but not limited to minor changes in the construction Work, unless authorized in writing by Owner. Design-Builder's performance of minor changes pursuant to this section shall not constitute a waiver of any claim Design-Builder may have for additional compensation and/or time. Any claim Design-Builder may have, however, shall be made in strict conformance with the Agreement and the other Contract Documents.

9.1.4 No Change Order shall be issued for the resolution of conflicts in the Construction Documents covered by the Design-Builder's Contingency.

9.1.5 Except in an emergency endangering life or property, no change in the Contract Price, GMP, or Contract Time(s) shall be made by Design-Builder except upon receipt of an approved Change Order countersigned by Owner authorizing such change, and only after Owner's governing body has previously approved such change as is required by Section 9.1.1 hereof.

9.1.6 Design-Builder shall notify Owner promptly in writing if Design-Builder believes that a change in scope or design will require a change in the Contract Price, GMP, and/or Contract Time(s). Owner shall have the right to require the performance of changed construction Work on a lump sum basis, a unit price not-to-exceed basis, or a time and material not-to-exceed basis.

9.1.7 To the maximum extent possible, Design-Builder shall notify Owner of any proposed changes in scope or design before bids or proposals for the construction Work associated therewith are requested from potential Subcontractors. Owner and Design-Builder shall reach agreement on the nature of the subject change, and upon Owner's written direction, eliminate the circumstances of the change or negotiate a mutually agreed cost change to be made to the Contract Price and/or GMP, subject to approval by Owner's governing body.

9.1.8 Within ten (10) business days of Design-Builder's receipt from Owner of a request for a proposal arising from an Owner-Requested Change, Design-Builder shall submit to Owner a Cost Change Proposal or Change Order Proposal, whichever shall apply pursuant to Section 1.3.15 hereof. Alternatively, within five (5) business days of its receipt of a request for a proposal arising from an Owner-Requested Change, Design-Builder shall provide Owner a written justification for why additional time to submit such a Cost Change Proposal or Change Order Proposal, whichever shall apply, is needed.

9.1.9 All Change Order Proposals and Cost Change Proposals submitted by Design-Builder shall be itemized and segregated by labor, equipment, and materials for the various components of the

Change Order Proposal or Cost Change Proposal; no aggregate proposals lacking such cost itemization and segregation will be accepted by Owner. Each of Design-Builder's Change Order Proposals and Cost Change Proposals shall be accompanied by signed proposals from any Subcontractor(s) who will perform any portion of such Change Order Proposal or Cost Change Proposal, as well as from any other persons or entities who will furnish the materials or equipment for incorporation therein. Design-Builder's Change Order Proposals and Cost Change Proposals shall also include Design-Builder's estimate of the time required to perform the Change Order Proposal or Cost Change Proposal, but only if Design-Builder is seeking an extension to the Contract Time(s).

9.1.10 There shall be no Design-Builder Fee included in any single Change Order Proposal covering construction Work under the Agreement and/or any amendment thereto. Any increase in Design-Builder Fee shall be calculated separately from individual Change Orders, pursuant to the terms of Section 6.2.2 of the Agreement.

9.1.11 All Cost Change Proposals shall be processed through the Project Management Software. Every Change Order Proposal and Cost Change Proposal shall be supported by a breakdown showing Design-Builder's method for arriving at net cost as defined herein. Owner will review Design-Builder's analysis and cost data and advise Design-Builder of its findings. Design-Builder shall provide such supporting data in suitable format. Owner shall verify the correctness and completion of each Change Order Proposal and Cost Change Proposal in its sole discretion, and shall return any incorrect proposal to Design-Builder for resubmission.

9.1.12 Design-Builder shall upload Cost Change Proposals in the Project Management Software. Within fourteen (14) days of the applicable Cost Change Proposal being uploaded to the Project Management Software, Owner shall review, and approve or reject, the Cost Change Proposal within fourteen days of upload. If Design-Builder requires a response to a Cost Change Proposal sooner than fourteen (14) days so as not to delay the Project, Design-Builder shall request that Owner expedite its response, including in any such request a detailed explanation regarding how a response outside Design-Builder's requested time period could impact the Project schedule.

9.1.13 A Change Order Proposal may be initiated by Design-Builder, but shall not be uploaded to the Project Management Software. A Change Order Proposal shall be prepared by Design-Builder and submitted to Owner for review. Approval of the Change Order by Owner is required, and as set forth in Section 9.1.1 hereof, any increase to the Contract Price, GMP, and/or Contract Time(s) shall require the prior approval of Owner's governing body before becoming effective.

9.1.14 The portions of a Change Order Proposal or Cost Change Proposal relating to labor and materials may include the reasonably anticipated net cost to any of Design-Builder's Subcontractors for labor and materials to be purchased for incorporation into the change in the construction Work, plus transportation and applicable sales and use taxes. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The term "cost" as used herein shall be limited to the following:

- (1). The actual costs of materials and supplies incorporated or consumed as part of the Project;
- (2). The actual costs of labor expended at the Project Site;
- (3). The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll

amounts, the total of which shall not exceed thirty percent (30%) of the actual costs of labor;

- (4). The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the Project;
- (5). The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the Project;
- (6). Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by Owner in writing;
- (7). Design-Builder may include from five percent (5%) up to a maximum of fifteen percent (15%) of said costs as overhead and profit for its Subcontractors. A breakdown of the requested overhead and profit costs shall be provided for the Subcontractor. Recent audit results shall be provided to support such overhead costs. In the case of deductive Change Orders, Design-Builder shall deduct no less than five percent (5%) profit for its Subcontractors, but shall not be required to deduct overhead.

9.1.15 If any of the items included in a lump sum Change Order Proposal or Cost Change Proposal are covered by unit prices, Owner may, if it requires the change in the construction Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum Change Order Proposal or Cost Change Proposal, in which event an appropriate deduction will be made in the lump sum proposal amount prior to the application of any allowed overhead and profit percentages. No additional Subcontractor overhead and profit shall be applied to any unit prices.

9.1.16 In the event that Design-Builder fails to submit its Cost Change Proposal for an Owner-Requested Change that can be covered by existing funds in Owner's Contingency, or otherwise fails to obtain approval for additional time to submit the Cost Change Proposal within the designated period pursuant to Section 9.1.8 hereof, Owner may order Design-Builder to proceed with the Owner-Requested Change (so long as there are enough funds in Owner's Contingency to cover the cost of this particular Owner-Requested Change) and Design-Builder shall so proceed. Owner shall unilaterally determine the reasonable cost and time to perform the construction Work in question, subject to the dispute resolution provisions of Article 10 hereof. The procedure set forth in this Section 9.1.16 shall only apply to changes to the construction Work that do not require approval from Owner's governing body.

9.1.17 Owner reserves the right to reject any proposal from Design-Builder for a change in the construction Work and to elect to perform said portion of the construction Work using a separate contractor. Under such circumstances, Design-Builder shall coordinate the performance of this portion of the construction Work by the separate contractor hired by Owner.

9.1.18 If Owner concludes that the terms of a Change Order Proposal or Cost Change Proposal are unacceptable, Owner may require Design-Builder to perform such construction Work on a time and material basis. If Owner elects to have the change in the construction Work performed on a time and material basis, Design-Builder shall submit to Owner daily time and material tickets, to include the identification number assigned to the change in the construction Work, the location and description of the change in the construction Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools), and such other evidence of cost as Owner may require. Owner may require authentication of all time and material tickets and invoices by persons designated by Owner for such purpose. Labor authentication may also require certified payrolls be provided to support all time invoiced. The failure of Design-Builder to secure any required authentication shall constitute a waiver by Design-Builder of any claim for

the cost of that portion of the change in the construction Work covered by a non-authenticated ticket or invoice.

9.1.19 In the event that the parties are unable to agree as to the reasonable cost and time to perform an Owner-Requested Change based upon Design-Builder's Cost Change Proposal and Owner does not elect to have this Owner-Requested Change performed on a time and material basis, Owner shall have the right to direct in writing that Design-Builder perform the change in the construction Work (so long as there are enough funds in Owner's Contingency to cover the cost of this particular Owner-Requested Change) and Design-Builder shall so proceed subject to its right to do so under protest. Failure of the parties to reach agreement regarding the cost and time of performing the Owner-Requested Change in construction Work, regardless of any resulting protest by Design-Builder, shall not relieve Design-Builder from performing the change in the construction Work, and any of the other construction Work, promptly and expeditiously, subject to the dispute resolution procedures set forth in Article 10 hereof.

9.1.20 A Change Order, or approved Cost Change Proposal when issued, shall constitute full compensation or full credit for the construction Work included, omitted, or substituted therefor. Each such Change Order or approved Cost Change Proposal shall show on its face the adjustment in time, if any, for achieving Substantial Completion and/or Final Completion of the Project as a result of the change in the construction Work. All Change Orders and approved Cost Change Proposals shall constitute a full resolution. No Change Orders or approved Cost Change Proposals containing a reservation of rights for later settlement of time extensions or delays shall be accepted by Owner.

9.1.21 No Change Order or approved Cost Change Proposal will invalidate, relieve, or release Design-Builder from any guarantee given by it pertinent to the Agreement or any of the other Contract Documents. No changes will affect the validity of the performance bond or relieve Design-Builder's Surety on said bond.

9.1.22 In the event of an emergency endangering life or property, Design-Builder and its Subcontractors may be directed to proceed on a time and material basis by Owner's Representative, whereupon Design-Builder shall proceed and keep accurately on such form as may be required, a correct account of costs incurred, together with all proper invoices, payrolls, and supporting data. Upon completion of this emergency construction Work, a Cost Change Proposal shall be submitted, reviewed and settled, as outlined in this section.

9.1.23 Design-Builder shall develop and implement a system for review, negotiation, and processing of all Change Order Proposals and Cost Change Proposals. Design-Builder shall, with complete supporting data, recommend necessary or desirable changes to the Project to Owner for approval.

9.1.24 All changes in the Work authorized by applicable Change Order or Cost Change Proposal 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.

9.1.25 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, Design-Builder may request drawing from the Design-Builder's Contingency 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 GMP 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, and subject to the requirements in Section 9.1 hereof regarding Change Orders and Change Order Proposals, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or GMP and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Intentionally omitted.

9.5 Intentionally omitted.

9.6 Tariffs.

9.6.1 Eligibility to Request Price Adjustment. If Tariffs change during the term of the Agreement and directly impact the cost of products, goods, materials, shipping, or clearly defined component part(s) of any such products, goods, or materials required for performance of the construction Work under the Agreement, then Design-Builder may request drawing from the Design-Builder's Contingency if the net increase in cost attributable solely to such Tariff change exceeds fifty percent (50%) of the initial cost of any such product, good, or material as presented in the Proposal. Design-Builder shall be limited to one price adjustment that results solely from changes in Tariffs per quarter.

9.6.2 Design-Builder's Request to Utilize Design-Builder's Contingency on Account of Tariffs. If Design-Builder seeks to utilize the Design-Builder Contingency because of qualifying, increased costs resulting solely from changes in Tariffs after the Effective Date of the Agreement, it must submit a Cost Change Proposal in accordance with the requirements of the Contract Documents. The Cost Change Proposal must contain all of the following: (i) the unit price(s) paid by Design-Builder as of the date(s) of award to the applicable Subcontractor(s) for the affected good(s) or raw material(s) used to furnish such good(s) necessary for performance of construction Work under the Agreement; (ii) the applicability of the Tariff to such good(s) or raw material(s); and (iii) Design-Builder's payment of the increased Tariff (either directly or through an increase to the cost paid for the affected good(s) or raw material(s)). The evidence submitted with the Cost Change Proposal shall be sufficient to allow Owner to verify that the Tariff is the sole cause of the qualifying price increase. As with any Cost Change Proposal initiated by Design-Builder, if Owner approves a Cost Change Proposal for qualifying, increased costs attributable solely to Tariff changes since the Effective Date of the Agreement, then such payment to Design-Builder shall come out of the Design-Builder's Contingency, subject to the limitations contained in Section 9.6.3 hereof. Under no circumstances shall any increase in the cost of good(s) or raw material(s) resulting solely from Tariff changes after the Effective Date of the Agreement cause the Contract Price and/or GMP to be increased.

9.6.3 Calculation of Price Adjustments, Increased. If approved by Owner, the amount of any qualifying, upwards adjustment arising from Tariffs shall equal the difference between the actual material cost incurred and a minimum of 151% of the baseline cost. Such price adjustments shall be limited to the affected materials and shipping costs.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested, and the basis of such request. Notwithstanding the requirements of this Section 10.1.1:

10.1.1.1 Owner shall not be required to provide written notice to impose Liquidated Damages for which Design-Builder may be responsible under the Contract Documents; and

10.1.1.2 With the exception of Abnormal Weather Conditions to be considered monthly pursuant to Section 5.3.3 of the Agreement, claims for adjustment to the Contract Time(s) for delays purportedly beyond Design-Builder's control shall be submitted by Design-Builder to Owner within thirty (30) days following the event(s) that caused the delay.

10.1.2 The failure of Design-Builder to provide notice of a claim for relief in accordance with the requirements of Section 10.1.1 shall be deemed an irrevocable waiver of the claim.

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. The parties agree to adhere to Rules Implementing Mediated Settlement Conferences in North Carolina Public Construction Projects, Adopted February 26, 2002.

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 hereof unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. In accordance with GS 143-128(f1), any claim, dispute or other matter in question (involving greater than \$15,000) arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceeding by either party. The dispute resolution process adopted by the N.C. State Building Commission shall be followed. The process entitled "Rules Implementing Mediated Settlement Conferences in North Carolina Construction Projects" are hereby incorporated by reference.

10.3 Arbitration.

10.3.1 Intentionally omitted.

10.3.2 Intentionally omitted.

10.3.3 Intentionally omitted.

10.3.4 Intentionally omitted.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder 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, BONDING CAPACITY, 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 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.

10.5.3 Consistent with Section 10.5.1 above, Owner shall not be liable to Design-Builder for any claims, costs, losses, or damages purportedly incurred or sustained by Design-Builder on or in connection with any other project or anticipated project.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price, the GMP, and/or Contract Time(s) if its cost or time to perform the Work is adversely impacted by any suspension

or stoppage of the Work by Owner; provided, however, that should Owner suspend Work due to unsafe Work conditions for which Design-Builder and/or its Derivative Parties are responsible, or because Design-Builder is performing Work that, when completed, will not conform to the requirements of the Contract Documents, then Design-Builder shall not be allowed any adjustment in the Contract Price, the GMP, and/or the Contract Time(s) attributable to such suspension.

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

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, including without limitation those concerning safety, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances, and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns, and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment, and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs, and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of 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 fails to exercise any of the options set forth in Section 1.6.2.3 of the Agreement; 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 fourteen (14) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such fourteen (14) 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, the GMP, and/or 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 ninety (90) consecutive days, or more than one hundred twenty (120) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits, or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for ninety (90) consecutive days, or more than one hundred twenty (120) 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 hereof after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within forty-five (45) 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 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.

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.

11.6 Intentionally omitted.

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 Instruments of Service 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 utilize the Project Management Software for the transmission of Electronic Data.

12.2.2 Intentionally omitted.

12.2.3 By transmitting Instruments of Service in electronic form, the transmitting party does not transfer or assign its rights in the Instruments of Service. 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 hereof, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 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 Applicability of North Carolina Public Records Law.

13.1.1 The Contract Documents and all materials submitted to Owner by Design-Builder, including, without limitation, all bids of Subcontractors and potential Subcontractors, are subject to the public records laws of the State of North Carolina. It is the responsibility of the Design-Builder to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to Owner. The Design-Builder understands and agrees that Owner may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders, and that such actions will not constitute a breach of the terms of the Contract Documents. To the extent that any other provision(s) of the Contract Documents conflict with this Section, the provisions of this Section shall control.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer, or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law and Venue.

13.4.1 All matters relating to the Agreement and all other Contract Documents shall be governed by the laws of the State of North Carolina, without giving effect to its conflict of law principles. The sole and exclusive venue for any legal proceedings between the parties necessary to resolve disputes arising under the Agreement and/or the other Contract Documents shall be the U.S. District Court for the Eastern District of North Carolina, Western Division, or Wake County Civil Superior Court.

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 Any notice by a party to this Agreement to another party or parties to this Agreement relative to any part of this Agreement shall be in writing. Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, with the words "Formal Notice" in the email's subject line, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.9.2 No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Agreement.

13.10 E-Verify

13.10.1 Design-Builder shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with G.S. 64-25 *et seq.* In addition, Design-Builder shall ensure that its Design Consultants and Subcontractors will act in compliance with the requirements of E-Verify and G.S. 64-25 *et seq.*

13.11 Prohibition on Contracts with Companies that Invest in Iran or Boycott Israel

13.11.1 Design-Builder certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to G.S. 147-86.55, *et seq.* In compliance with the requirements of the Iran Divestment Act, Design-Builder shall not utilize in the performance of the Agreement any Design Consultants or Subcontractors that are identified on the Final Divestment List.

13.11.2 Design-Builder certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to G.S. 147-86.81.

13.11.3 Design-Builder also agrees to immediately notify Owner that it is identified as an ineligible company on either list at any time during the term of this Agreement.

13.12 Right to Audit and Access to Records

13.12.1 Owner may conduct an audit of any services performed and fees paid subject to the Agreement. Owner, or its designee, may perform such an audit throughout the contract period and for three (3) years after termination thereof or longer if otherwise required by law.

13.12.2 Design-Builder and its agents shall maintain all books, documents, papers, accounting records, contract records and such other evidence as may be appropriate to substantiate costs incurred under the Agreement (individually, a "Record", and collectively, the "Records"). Owner, or its designee, shall have the right to, including but not limited to: review and copy records; interview current and former employees; conduct such other investigation to verify compliance with contract terms; and conduct such other investigation to substantiate costs incurred by the Agreement.

- a. "Records" shall further be defined as data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in Owner's sole discretion, relate to matters, rights, duties or obligations of the Agreement and the other Contract Documents.
- b. Records and employees shall be available during normal business hours upon advanced written notice. Electronic mail shall constitute written notice for purposes of this section.
- c. Design-Builder shall provide Owner or its designee reasonable access to facilities and adequate and appropriate workspace for the conduct of audits.
- d. The rights established under this section shall survive the termination, completion, or expiration of the Agreement, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment, or the subsequent amendment of the Agreement.
- e. Design-Builder shall reimburse Owner for any overcharges identified by the audit within ninety (90) days of written notice of Owner's findings.
- f. Design-Builder shall, upon request, provide any records associated with this engagement to the North Carolina State Auditor that are necessary to comply with the provisions of G.S. 147-64.7.

13.13 Joint Drafting.

13.13.1 Owner and Design-Builder expressly agree that the Agreement and these General Conditions of Contract were jointly drafted, and that both had opportunity to negotiate their terms and to obtain the assistance of counsel in reviewing their terms before execution. Therefore, the Agreement and these General Conditions of Contract shall be construed neither against nor in favor of either Owner or Design-Builder, but shall be construed in a neutral manner.

13.14 Advertising.

13.14.1 Design-Builder shall not use the existence of the Agreement, or the name of Owner, as part of any advertising or marketing materials without the prior written approval of the Owner.

13.15. Design-Builder as Independent Contractor.

13.15.1 Design-Builder shall be considered to be an independent contractor and as such shall be wholly responsible for the Work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Design-Builder represents that it has or will secure, at its own expense, all personnel required in

performing the services under the Agreement. Such employees shall not be deemed to be employees of or have any individual contractual relationship with Owner.

13.16. Design-Builder Evaluation.

13.16.1 Design-Builder's overall Work performance on the Project shall be fairly evaluated for determining qualifications to bid on future City of Raleigh capital improvement projects. In addition to a final evaluation, interim evaluation(s) may be prepared during the progress of the Project.

13.17. Acknowledgment of City Brand and Tree Logo Ownership and Restrictions.

13.17.1 Owner has developed proprietary branding (the "City Brand") centered around the Raleigh tree mark logo (the "Tree Logo"). Owner's exclusive rights and ownership in and to the Tree Logo are protected under trademark and copyright, including U.S. Copyright Reg. No. VAu1-322-896, N.C. State Trademark Registration Reg. No. T-23070 and Federal Trademark Registration Reg. No. 5,629,347, as well as under other federal and state laws. Design-Builder acknowledges and understands that Owner is not conferring any license to Design-Builder under the Agreement to use or depict the Tree Logo or other aspects of the City Brand. Design-Builder shall not make any use or depiction of the Tree Logo or other aspects of the City Brand without the prior express written approval of Owner. In this regard, should any materials being produced by Design-Builder for Owner under the Agreement, as it may be amended hereunder, contemplate use or depiction of the Tree Logo, including, but not limited to, printed materials, digital media, signage and/or display materials, Design-Builder shall proceed under the auspices and direction of Owner's Communications Department and shall comply with all guidelines and restrictions governing use or depiction of the Tree Logo.

13.18. Communications.

13.18.1 If communications to the public and/or Owner employees are required as part of the scope of Work under the Agreement then Design-Builder shall work with Owner in the development of a communications plan ("Communications Plan") that must first be approved by Owner in writing before any such communications are delivered to the public and/or Owner employees.

13.18.2 For purposes of this Section 13.18, such written approval by Owner shall be provided by electronic mail by the applicable Owner Communications Department employee who is responsible for reviewing and approving the Communications Plan, such electronic mail to be sent to the electronic mail address for the Design-Builder's Representative as listed in Section 9.2.2 of the Agreement.

13.18.3 Among other things, the Communications Plan must establish whether Owner or Design-Builder will be responsible for sending any such communications to the public and/or Owner employees as required either by the Agreement or the Communications Plan. The Communications Plan also shall include, but not be limited to, communications objectives, target audience, and deliverables (print, video, website, social, direct, or digital). Design-Builder shall comply with the Communications Plan when communicating to the public and/or Owner employees pursuant to the Agreement and the Communications Plan. All such communications shall comply with Owner's brand and communications guidelines, as the same may be amended or modified from time to time.

13.18.4 Owner's current brand and communications guidelines are incorporated into the Agreement by reference and can be found on the City's website here: <https://raleighnc.gov/doing-business/city-brand-guidance-vendors>.

13.18.5 For purposes of this Section 13.18, "Communications" is defined as any public or Owner employee facing information presented in channels such as, but not limited to, a website, mobile applications, social media, printed materials, vehicles, billboards, and videos.

13.18.6 Communications Plan Approval: Any materials, messaging or outreach from Design-Builder related to marketing and communications of any service or effort under the Agreement must first be reviewed and approved by Owner's Communications Department. This is to ensure that the Communications Plan: (i) complies with Owner's brand and communication guidelines; (ii) integrates with Owner's other communications channels and digital strategy; (iii) meets accessibility guidelines; and (iv) conforms to communications best practices with respect to general user experience.

13.18.7 Accessibility Requirements: For web content that Design-Builder is to make accessible to the public and/or Owner employees as part of an approved Communications Plan that is included in the scope of Work under the Agreement, all web materials including, but not limited to, tools, mobile applications, and websites, generated by, or on behalf of, Design-Builder must meet at least the mid-range conformance level, AA compliance of the current Web Content Accessibility Guidelines, as the same may be amended from time to time.

13.18.8 Any such web content generated by, or on behalf of Design-Builder, as part of a Communications Plan associated with the Agreement shall meet all standards of good cognitive web accessibility, which include the following:

- Using proper headings and lists
- Using unique links
- Using alternative text and captions
- Using more white space
- Dividing content into more manageable pieces
- Making forms manageable by breaking them into multiple, sequential steps
- Providing a logical reading order
- Being consistent with fonts, colors and locations of page elements
- Offering keyboard access
- Offering content in multiple formats
- Understanding minimum contrast

13.18.9 Languages: Digital sites/ tools that are for public use/consumption, including for use by Owner employees, under a Communications Plan associated with the Agreement must have translation module (e.g., G-translate, Weglot) so that the service is available in all languages. At minimum, Spanish translation is required on all such digital sites/tools based on low English proficiency requirements:

13.18.10 In most cases, entities that are recipients of federal financial assistance through U.S. Department of Health and Human Services (HHS) must provide language assistance services in order to comply with their legal obligation to take reasonable steps to ensure meaningful access to their programs by persons with Limited English Proficiency (LEP).

13.18.11 Content: For any communications content that Design-Builder is required to generate, or have generated, as part of its scope of Work under the Agreement, Design-Builder shall send such content to Owner Communications Department staff in raw, high-resolution format for inclusion in communications materials to be made accessible to the public and/or Owner

employees as set forth in the Communications Plan that arises from the Agreement (i.e., websites, mobile applications, printed materials collateral, and social media). PDF attachments shall be used only as a last resort and only after written approval by Owner, with such written approval to be provided by Owner in electronic mail format as described elsewhere in this Section 13.18.

13.18.12 Design-Builder shall only provide to Owner communications materials for which Owner has rights to use, with written documentation of such use rights being provided to Owner as requested from time to time by Owner in its sole discretion.

13.18.13 All working files agreed upon for the specific Communications Plan shall be provided to Owner Communications Department, i.e., text, graphics, charts and data, infographics, and original native files such as Illustrator, Excel, ArcGIS, etc. Following are the file format specifications:

- Images: At least 300dpi for printing at actual size; 96dpi and at least 1920x1080px for digital/Web.
- Video: Any video should be no less than Standard HD (1920x1080) but preferable 4k.
- Text: Word document using accessibility best practices (heading structure, table of contents, and tables).

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Contact us



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