



DESIGN-BUILD REQUEST FOR QUALIFICATIONS

RFQ #2025-004

Crooked Creek WRF Office and Storage Building Project SP-107

Non Mandatory Pre-Submittal and Business Outreach Meeting: Will take place on August 8, 2024. Although this meeting is not mandatory, attendance is strongly encouraged. Refer to page 2 for time and location.

Due Date: August 29, 2024
Time: 2:00 PM EDT
Submittal Location: Union County Government Center
Administrative Services
Procurement Division, Suite #709
500 North Main Street
Monroe, NC 28112-4730

Procurement Contact Person

Name: Cheryl Wright, CPPO, CLGPO
Title: Director, Procurement
E-mail: cheryl.wright@unioncountync.gov
Telephone: 704-283-3563

Request for Qualifications

Note: This document was prepared using elements of DBIA Document No. 405 and 410.

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

OWNER:

Union County
500 North Main Street
Monroe, NC 28112

PROJECT:

Crooked Creek WRF Office and Storage Building

Location:

Town of Indian Trail, Union County, North Carolina

PROCUREMENT WEBSITE

To view or download the RFQ for this project go to either website listed below.

Union County procurement web-site: <http://unioncountync.gov/departments/bids-procurement/current-bids>

State of North Carolina eVP: <https://evp.nc.gov/solicitations/>

SOQ DUE DATE AND TIME:

Offeror’s SOQ shall be submitted no later than: **August 29, 2024 2:00 PM EDT**. Any submittals received after this date and time shall be rejected without exception.

SUBMISSION REQUIREMENTS:

The SOQ must be submitted electronically by using the following link:

<https://ifportal.unioncountync.gov/Forms/procurementsubmit>. Select the Solicitation drop down arrow and choose this RFQ from the list. Complete the form, upload the SOQ as one complete document and select submit. The maximum size accepted is 20 MB. An email response will be sent to the address entered on the form as your confirmation receipt.

The submittal, one complete document, must be signed by a person who is authorized to bind the proposing Company. Instructions for preparing the SOQ are provided herein. Select the Solicitation drop down arrow and choose this RFQ from the list. Complete the form, upload the SOQ as one complete document and select submit. The maximum size accepted is 20 MB. An email response will be sent to the address entered on the form as your confirmation of receipt.

The SOQ **must be signed** by a person who is authorized to bind the proposing Respondent. Instructions for preparing the SOQ are provided herein. **Paper submissions will not be accepted. Submissions e-mailed directly to the Procurement Contact will not be accepted.**

There is no expressed or implied obligation for Union County to reimburse Respondents for any expenses incurred in preparing a response to this request.

Union County reserves the right to reject any or all submittals, to waive technicalities and to make such selection deemed in its best interest, to award to multiple Respondents, and to cancel this RFQ.

PRESUBMITTAL MEETING:

A **non-mandatory pre-submittal meeting** will be held on August 8, 2024 at 2:00 PM EDT at the Crooked Creek WRF at 4015 Sardis Church Road, Monroe, NC 28110.

QUESTION DEADLINE:

The deadline for questions is **August 16, 2024 by 5:00 pm, EDT**. The primary purpose is to provide participating Respondents with the opportunity to ask questions, in writing, related to the RFQ. Addenda will be issued prior to the due date to answer applicable questions.

Submit questions by e-mail to Cheryl Wright at cheryl.wright@unioncountync.gov by the deadline shown above. The email should identify the RFQ number and project title. All questions and answers may be posted as addenda on www.unioncountync.gov and/or <https://evp.nc.gov>.

COMMUNICATION:

All communications, any modifications, clarifications, amendments, questions, responses or any other matters related to this Request for Qualifications must be made only through the Procurement Contact noted on the cover of this RFQ. A violation of this provision is cause for the County to reject a Respondent's SOQ. No contact regarding this document with the Board of County Commissioners or other County employees is permitted and may be grounds for disqualification.

SECTION 1: OWNER DESCRIPTION

1.1 General

The County (estimated population 254,700) is located in the central, southern piedmont. The County provides its citizens with a full array of services that include public safety, water/wastewater utilities and sanitation, human services, cultural and recreational activities, and general government administration.

Union County (the County) currently provides wastewater service to residents in its defined service areas in the unincorporated portions of the County, as well as towns and villages within Union County with the exception of the City of Monroe.

The Crooked Creek Water Reclamation Facility (WRF) serves the Upper and Lower Crooked Creek Service Areas in Union County. The existing facility has recently been upgraded and modernized, including additional equalization storage facilities, new headworks, new electrical and aeration systems. The site has inadequate office space for required staffing and materials storage for proper operation.

The County needs to construct a building with approximately 1500 square feet (65 ft. x 22 ft. or 60 ft. x 25 ft.) consisting of an office area and adjacent storage with a roll-up door. The office area should be approximately 900 sf with 4 offices and 2 individual restrooms with a small break room (with sink, counter and space for refrigerator). The storage area should be 550 to 600 sf with a roll-up door for access. This project would be constructed at Union County Water's Crooked Creek Wastewater Facility in Indian Trail, adjacent to the existing control building. The site is flat and utilities (water, sewer and power) are available.

1.2 Funding/Authority

The Crooked Creek WRF Office and Storage Building project will be fully funded by Union County through financing and approvals of its Board of County Commissioners. The County's Capital Improvement Program (CIP) and utility rate structure have been established to fund this project.

SECTION 2: OVERVIEW OF PROJECT

2.1 Project Objectives

The Owner has established the following overall strategic objectives for the Project:

- Maintain a safe, injury free work environment and project site.
- Complete the project on, or ahead, of schedule.
- Complete the project on, or below, the County's capital funding plan.
- Establish a collaborative relationship between the County, regulatory review agencies, other stakeholders, and the Design-Build Team to deliver quality design and construction.
- Design and construct a project that will achieve design excellence.
- Minimize impacts to Union County residents and other stakeholders adjacent to the WRF site.
- Demonstrate the value and benefits of integrated delivery through the Progressive Design-Build process.
- Provide seamless transition of start-up activities to the County's operations, maintenance, and management team.
- Incorporate the principles of sustainability in the design and construction of the project.

2.2 Scope of Work

2.2.1 Project Description

The Project includes construction of a building with approximately 1500 square feet. This project would be constructed at Union County Water's Crooked Creek Wastewater Facility in Indian Trail, adjacent to the existing control building. The site is flat, and utilities (water, sewer and power) are available. Design and construction of the new facility is expected to include:

- A 1500 sf combined office and storage building.
- An approximate 900 square foot office area with 4 offices, 2 restrooms and a break area.
- The break area should include a sink, counter, and space for a refrigerator.
- A 500 - 600 square foot storage area with roll-up door.
- Site preparation and utility connections.
- Related electrical, plumbing, mechanical, and communication systems.

2.2.2 Project Phases and Negotiations Preparation

This Project will be delivered in a two-phased approach as described below.

Phase 1 – Design and Pre-Construction Services: It is anticipated that the scope of services for Phase 1 will be negotiated on a not-to-exceed basis and will require approval by Union County's Board of County Commissioners. During this phase, the scope of services will include overall project scoping, design workshops, development of an initial opinion of cost, design services through a 30% submittal package (with cost opinion update), design completion to 60% with the preparation of a Guaranteed Price (GP), schedule for Phase 2 and completion of the design for construction.

A GP is expected for the Project at approximately 60 percent level of design, although earlier GPs for all or a portion of the Project will be considered.

The GP will be converted to a Guaranteed Maximum Price (GMP) with a shared savings provision or to a Lump Sum (LS) price delivery through an amendment to the Design-Build Contract (Guaranteed Price Amendment). The GMP approach will require open book cost monitoring through Phase 2. The LS approach will not require open book cost monitoring in Phase 2.

If a GP cannot be reached, the County will exercise a contractual "off-ramp" that may release the Design-Builder from further engagement or, at the County's option, may require the Design-Builder to complete and deliver the design under the Design-Builder's as-proposed Phase 1 price. In the event that the County initiates the contractual off-ramp, the County will reserve the right to cancel or re-procure the Project using traditional delivery or design-build methodology.

Multiple GPs at various levels of design completion, including those in support of early materials purchase or early start construction packages will be considered on a case-by-case basis at the sole discretion of the County.

Note: Once GP is reached, it is expected that Phase 1 will continue and run concurrently with Phase 2, until final design is achieved.

Phase 2 – Construction: It is anticipated that the scope of services for Phase 2 will be negotiated on a GP basis (executed as a GMP or LS) and will require approval by Union County’s Board of County Commissioners. During this phase, the scope of services will include construction of the facilities (including general conditions for management of construction), training, commissioning, testing, and all other scope required to achieve substantial and final Project completion as outlined in the Design-Build Agreement (except for completion of design, which is part of Phase 1).

Design-Build Services Agreement: The Owner will enter into negotiations for the Design-Build Agreement with the Preferred Offeror. The Design-Build Agreement is anticipated to utilize modified versions of the Design-Build Institute of America Progressive Design-Build Agreement for Water and Wastewater Projects Document No. 545, and the DBIA Standard Form of General Conditions of Contract Between Owner and Design-Builder, Document No. 535, Examples of these documents are set forth in this RFQ (Exhibits F and G respectively), however, these versions of these documents should not be considered the final versions of the documents to be proposed for use by the Owner. Rather, these documents are attached for review to give examples of the documents that may be used. The final documents proposed to be used by Owner for review and feedback will be given to the Preferred Offeror at the appropriate time for review and feedback.

It should be noted that Union County must be able to demonstrate that execution of the Phase 2 work is cost-effective, allows for local sub-contractor competition, achieves schedule milestones, and meets the needs of the overall Project to proceed with the GP Contract Price Amendment as defined in the contract. If a Phase 2 Agreement is not reached, then Union County will have no further contractual responsibility to the Design-Builder and may seek alternatives to project completion, including execution of the full design as scoped for Phase 1 for conventional bidding.

2.2.3 Design-Builder Work Scope

The work scope for the Design-Builder for the Project is expected to include, but not be limited, to the following:

- Implementing a robust safety program for all design and construction related activities.
- Leading interactive design workshops with Union County Water (UCW) staff.
- Completing all preliminary and final design efforts for the project, with design document submittals at 30%, 60%, and 100%.
- Developing an initial opinion of cost and then updating that cost opinion during design development with submittals at the 30% design stage and GMP at the 60% design stage. In between submittal milestones, an updated cost opinion inclusive of up-to-date estimate adjustments (adds/deducts) should be maintained throughout development of design during the Phase 1 effort.
- Completing any site investigation and surveying required for successful design and construction and development of construction pricing.
- Working with Owner to finalize all permitting activities and secure permitting by DB Team required for project construction.
- Providing all necessary project management, documentation, and progress reporting as required for a successful project.
- Executing all design activities using Building Information Modeling (BIM) software.
- Constructing all improvements required to deliver the Project.
- Delivering quality assurance and quality control of design and construction related activities.
- Providing architectural/engineering construction administration services during construction to include RFIs, shop drawing reviews, contractor change order requests, preparation of record drawings, and project management support.
- Construction management services
- Completing project close-out activities including final punch-lists, operations and maintenance manual production, training, project certifications, and warranty efforts.

2.3 Estimated Budget and Schedule

The estimated budget for the Scope of Work is currently \$1,00,000.00.

As per section 5.2.1, ability to obtain payment and performance bonds of \$1,200,000.00 will be required to compensate for adjustments to the estimated budget for change orders.

The current schedule for the Project is outlined in the following table.

Target Project Schedule

Contract Award for Design-Builder (Phase 1)	October 2024
Phase 1 Design to 60% and GMP	January 2025
Construction Begins (Phase 2)	March 2025
Contract Completion	September 2025

It should be noted that Union County has obtained the necessary property interests for the Project.

The schedule outlined above is Union County's estimation of timeframes that will allow continuous, seamless, and orderly progression of the work for the Design-Builder. Union County Water (UCW) expects that the selected Design-Builder will work collaboratively during Phase 1 (or Phase 2) on any adjustment outlined in the schedule above.

2.4 Project Procurement Schedule

The following is the Project Procurement Schedule. The Owner reserves the right to modify the Project Procurement Schedule via Addenda (if applicable) issued prior to the date set forth below.

Target Date	Activity
July 25, 2024	Issue RFQ
August 8, 2024	Non-mandatory Pre-submittal and Business Outreach Meeting
August 16, 2024	Last Date to Submit Questions Regarding the RFQ
August 29, 2024	SOQ Due Date
September 09-10, 2024	Notification of Short-Listed Offerors
September 18-20, 2024	Interviews with Short-Listed Offerors
October 28, 2024 (estimated)	Contract Award

2.5 Definitions

Business Day: Any day on which the Owner is open for regularly conducted business.

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

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

Design Excellence: Design Excellence is achieved with memorable design solutions that exceed the Owner's vision and defined functional requirements; include state of the art structures and facilities that are high performance and sustainable; and possess a holistic awareness that considers context, site, and the environment.

Guaranteed Maximum Price (GMP): The maximum price the County will pay for completion of the Phase 2 work, assuming the Guaranteed Price Amendment incorporates this form of pricing. The GMP will contain the following elements: 1) the estimated direct cost of work, whether self-performed or subcontracted; 2) a fixed price for General Conditions based on the scope of General Conditions work defined in the Design-Build Contract; 3) the Design-Builder's fee for overhead and profit expressed as a percentage of the direct cost of work; and 4) a contingency.

Guaranteed Price (GP): The price for which the Design-Builder guarantees it will complete the Work except for any County-directed changes or uncontrollable circumstances.

Guaranteed Price Amendment: The amendment to the Design-Build Contract establishing the scope of construction, the Guaranteed Price, the schedule for completing the work, and various other items.

Key Team Member: Individuals who will be assigned to the Project who play an important role in the design, construction, or management of the Project.

Lump Sum (LS): The price that the County will pay for completion of Phase 2, assuming the Guaranteed Price Amendment incorporates this form of pricing. Under a Lump Sum arrangement, payment for Phase 2 work will be on a milestone/schedule of values basis.

Preferred Offeror: The Offeror that the Owner determines achieves the apparent best overall ranking

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

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

Projects of Similar Scope and Complexity: Projects that had completion dates within the last 5 years and that have many or all of the following characteristics:

- Projects of a similar size and budget that include:
 - Design and construction of small prefabricated or PEMB buildings of similar size.
 - Design and construction of other methods/materials of site-built structures of a similar size.
 - Permitting and preliminary design for the above referenced facility.
- Projects that utilize an integrated delivery method that require strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design; and
- Projects where the Design-Builder was selected prior to the establishment of the final price and schedule and where the Design-Builder collaborated with the Owner to develop the final price and schedule.

SECTION 3: PROCUREMENT PROCESS

3.1 General Information

3.1.1 Compliance with Legal Requirements

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

3.1.2 Conflict of Interest and Communications with the Owner

Consultants who assisted the Owner in the RFQ preparations may not propose or participate on any Design-Build Team on this Project.

Offerors are required to conduct the preparation of their SOQs with professional integrity and free of lobbying activities. Communication with the Owner regarding this Project shall be via email only and directed to the Procurement contact person listed on page 2 under Deadline for Questions.

From and after the issuance date of this RFQ, Offerors shall not communicate about the Project or the Procurement with any other Owner employees, representatives, or consultants. Communication with other Owner employees, representatives, or consultants regarding the Procurement may cause the firm involved to be disqualified from submitting under this Procurement. Any verified allegation that a responding Offeror or Team Member or an agent or consultant of the foregoing has made such contact or attempted to influence the evaluation, ranking, and/or selection of short-listed Offerors may be the cause for Owner to disqualify the Offeror team from submitting an SOQ, to disqualify the Team Member from participating in the Procurement, and/or to discontinue any further consideration of such Offeror or Team Member.

Following the Owner's approval of the Short-Listed Offerors, the Owner anticipates that certain communications and contacts will be permitted. The RFQ and/or other written communications from Owner will set forth the rules and parameters of such permitted contacts and communications. To the extent any Offeror intends at any time to initiate contact with the public regarding the Project, the nature of such intended contact and the substance thereof must be approved in writing by the Owner prior to the commencement of such activities.

3.1.3 Expenses of Offeror

The Owner accepts no liability for the costs and expenses incurred by firms in responding to this Procurement. Each Offeror that enters into the Procurement process shall prepare the required materials and the SOQ at its own expense and with the express understanding that the Offeror cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the process, even in the event the Owner cancels this Project or rejects all SOQs.

3.1.4 Public Disclosure

All documentation and submittals provided to the Owner may be considered public documents under applicable laws and may be subject to disclosure. Offerors recognize and agree that the Owner will not be responsible or liable in any way for any losses that the Offeror may suffer from the lawful disclosure of information or materials to third parties.

Any materials requested to be treated as confidential documents, proprietary information, or trade secrets must be clearly identified and readily separable from the balance of the SOQ. Such designations will not necessarily be conclusive, and Offerors may be required to justify why such material should not, upon written request, be disclosed by the Owner under the applicable public records act. The Owner will endeavor to provide at least two (2) Business Days' notice of a public records request for material submitted pursuant to this Procurement. Offerors must respond to the notice in writing with any objection to the production of the documents within two (2) Business Days of receipt of the notice. All costs incurred by Offerors associated with any public records request are the responsibility of the Offerors.

3.2 Owner Rights and Procurement Conditions

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

- To cancel the Procurement process and reject any and all SOQs;
- To waive any informality or irregularity;

- To revise the Procurement Documents and Schedule via an Addendum;
- To reject any Offeror that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
- To require confirmation of information furnished by an Offeror, require additional information from an Offeror concerning its SOQ and require additional evidence of qualifications to perform the work described in this RFQ;
- To provide clarifications or conduct discussions, at any time, with one or more Offerors;
- To contact references who are not listed in the Offeror's SOQs and investigate statements on the SOQs and/or qualification of the Offeror and any firms or individuals identified in the SOQ;
- To consider alternative concepts and/or approaches identified by Offerors;
- To take any action affecting the RFQ process, or the Project that is determined to be in the Owner's best interests; and
- Approve or disapprove of the use of particular Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Subconsultants, Subcontractors, or Key Team Members from those identified in the SOQ. Such approval or disapproval shall not be unreasonably exercised.

3.3 Outline of the Procurement Process

3.3.1 Request for Qualifications (RFQ)

This RFQ invites firms to submit SOQs describing in detail their technical, management, and financial qualifications to design, permit, construct, commission, and close out the Project. The issuance of this RFQ is the first phase of the Procurement process.

Offerors will submit their SOQ and other deliverables required pursuant to this Procurement at the time and in the manner set forth in this RFQ and any Addenda. The Owner will not consider SOQ or other deliverables that are submitted after the Time set forth in the RFQ. Offerors are solely responsible for making sure that the Owner receives the SOQ in a timely fashion.

The Owner will evaluate the information submitted by each Offeror to 1) determine whether the Offeror meets the mandatory minimum requirements and 2) evaluate the SOQ provided by each Offeror pursuant to the evaluation system described below. Any Offeror who fails to meet the mandatory minimum requirements set forth in this SOQ will be deemed non-responsive and will not be considered further by the Owner in this Procurement.

All SOQs will be evaluated in accordance solely with the criteria established in this RFQ and any Addenda issued thereto. The evaluation criteria are listed below, including the relative weight or importance given to each criterion.

Not more than three responsive and responsible firms will be selected as Short Listed Offerors. Only those firms that have been short-listed will be invited to participate in subsequent interviews.

The results of the SOQ evaluations will not be carried forward and included in the final evaluation and selection after the interviews.

Design-Build Team Members and individual Key Team Members will be used as a basis for selection. Once shortlisted, neither the Offeror nor Team Members that are submitted to the Owner as part of the SOQ may substitute a listed consultant, subconsultant or subcontractor, or any individual listed as a Key Team Member; however, should a change be necessitate to any submitted Team Member or Key Team Member, this will result in re-evaluation and may result in a change to the evaluation and ranking of the Offeror. Changes to Team Members and individual Key Team Members shall require written approval by the Owner.

3.3.2 Selection Process

The Owner will establish an RFQ Evaluation Committee to review and evaluate the SOQs. The RFQ Evaluation Committee will evaluate the SOQs in accordance with the published evaluation criteria.

At its sole discretion, the Owner may ask written questions of Offerors, seek written clarifications, and conduct discussions with Offerors on the SOQs.

The Owner will provide written notification to all Short Listed Offerors of the selection decision at the conclusion of the Procurement.

At the Owner's discretion, it will initiate negotiations with the Preferred Offeror. The "Preferred Offeror" is the Offeror that the Owner determines achieves the apparent best overall ranking. If the Owner is unable to execute a contract with the Preferred Offeror, negotiations with the Preferred Offeror may be terminated, and provided that such negotiations are terminated in writing, the Owner may proceed to negotiate with the next Preferred Offeror. The Owner will continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated. Negotiations are at the Owner's sole discretion.

3.3.3 Evaluation and Ranking of Offerors

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

For the purpose of selecting Short-Listed Offerors, the evaluation criteria will be given the following relative weights.

RFQ Section	Criteria	Weight
5.3.1	Project Team Organization and Availability of Resources	20 percent
5.3.2	Demonstrated Past Performance with Relevant Successful Projects of Similar Scope and Complexity	20 percent
5.3.3	Design-Build Design, Engineering, and Permitting Past Performance	20 percent
5.3.4	Design-Build Construction Past Performance	20 percent
5.4	Project Approach	20 percent
		100 percent Total Weight

After identification of Short-Listed Offerors, previous evaluation and rankings are not carried forward. For the purpose of selecting a preferred Offeror, the evaluation criteria will be given the following relative weights:

<u>Interview Criteria</u>	<u>Weight</u>
<u>Project Team Organization and Availability of Resources</u>	<u>30 percent</u>
<u>Technical Approach</u>	<u>40 percent</u>
<u>Project Management Approach</u>	<u>30 percent</u>
(Specific interview requirements will be provided at a later date)	100 percent Total Weight

SECTION 4: SOQ DOCUMENTATION REQUIREMENTS

4.1 SOQ Format Requirements

The SOQs shall comply with the following format requirements:

- SOQs shall be formatted in searchable .pdf format.
- The body of the SOQ shall be organized as outlined in Section 4.2.
- The body of the SOQ, when printed, shall be limited to a maximum of twenty-five (25) single-sided pages.
 - The only documentation that is not included in the page count is the following:
 - i. Letter of interest or cover letter and SOQ Offeror information (Exhibit E);
 - ii. Statement of Offeror's Ability to Provide a Performance and Payment Bond (Exhibit A);
 - iii. Statement of Offeror's Ability to Meet the Owner's Insurance Requirements (Exhibit B);
 - iv. Financial Documentation;
 - v. Corporate Structure Questionnaires (Exhibit C);
 - vi. Personnel Resumes
 - vii. Divider tabs, provided that they contain no substantive content;
 - viii. Cover pages, provided that they contain no substantive content; and
 - ix. Summary of lawsuits and claims.
- The Owner, at its sole discretion, reserves the right (but is not required) to disqualify any team that does not conform to the page count limit.
- A "page" shall be defined as one single-sided piece of paper that has words, charts, tables, pictures, or graphics. Pages shall be 8.5 x 11 inches, with the exception of five (5) pages, which may be presented in 11 x 17-inch format; however, 11x17 pages may only contain graphics and/or designs and may not be used for an Offeror's narrative.
- The font shall be no smaller than 11 point except for captions and labels on graphics.

4.2 SOQ Organization

SOQs shall consist of six sections that include dividers for each section:

1. Letter of Interest and SOQ Offeror Information (Exhibit E)
2. Minimum Qualifications
 - Statement of Offeror's Ability to Provide Performance and Payment Bond (Exhibit A) (See Section 5.2.1).
 - Statement of Offeror's Ability to Meet the Owner's Insurance Requirements (Exhibit B) (See Section 5.2.2).
3. Technical and Management Qualifications
 - Project Team Organization and Availability of Resources
 - Demonstrated Past Performance with Relevant Successful Projects of Similar Scope and Complexity
 - Design-Build Architectural Design, Engineering, and Permitting Past Performance
 - Design-Build Construction Past Performance

4. Project Approach
5. Corporate Structure Questionnaire(s) (Exhibit C)

SECTION 5: SOQ EVALUATION CRITERIA AND SUBMITTAL INFORMATION

5.1 Letter of Interest and SOQ Offeror Information

The SOQ must include a cover letter containing the name, address, telephone number, and e-mail address of the Offeror and the principal contact person. The Letter of Interest shall also include the following: (1) name, address, telephone number, and e-mail address for all listed consultants, subconsultants and/or subcontractors for the Project; and (2) the type of firm or organization (corporation, partnership, joint venture, etc.) that will serve as the prime contracting party. The letter of interest and SOQ Offeror Information (Exhibit E) may be a maximum of three (3) pages (not included in overall page count).

5.2 Minimum Qualifications

5.2.1 Statement of Offeror's Ability to Provide Performance and Payment Bond (Pass/Fail)

As a **mandatory minimum requirement**, the Offeror must have the ability to obtain a performance and payment bond in the amount of \$1,200,000.00. Offeror shall provide a letter signed by an authorized representative of Offeror's surety company (or agent) confirming that the Offeror can meet this minimum requirement. Any Offeror who fails to meet this mandatory minimum requirement will be considered non-responsive and will not be considered further by the Owner in this Procurement process. The surety shall be a company authorized to conduct business in the state where the Project is located with a minimum rating of A.M. Best A-VII. Letters indicating "unlimited" bonding capability are not acceptable.

5.2.2 Statement of Offeror's Ability to Meet the Owner's Insurance Requirements (Pass/Fail)

As a **mandatory minimum requirement**, the Offeror must document that it has the ability to meet the minimum insurance requirements as set forth in the attached draft Insurance Requirements (Exhibit B). Offeror shall provide a letter from Offeror's insurance company or broker indicating that the Offeror is capable of complying with the insurance requirements specified in Exhibit B. Any Offeror who fails to meet this mandatory minimum requirement will be considered to be non-responsive and will not be considered further by the Owner in this Procurement. The insurer shall be a company authorized to conduct business in the state where the Project is located with a minimum rating of A.M. Best A-VII.

5.3 Technical and Management Qualifications

The SOQ shall demonstrate the Design-Build Team's ability to undertake the Project by providing the following technical and management qualifications of the Offeror, Team Members, and individual Key Team Members. The Offeror is responsible for ensuring that contact information contained in their referenced Project profiles is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications.

Emphasis will be placed on past performance and expertise in performing substantive work on projects of Similar Scope and Complexity, as described in the definitions above. The Owner reserves the right to award more points to projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity. The Owner also reserves the right to award more points to successful projects in which the Offeror, Team Members, and/or individual Key Team Members had substantial responsibility for their respective scopes of work. In addition, the Owner reserves the right to award more points to successful projects in which the Offeror, Team Members, and/or individual Key Team Members have completed in the Southeast or Mid-Atlantic regions of the US.

The SOQ will be evaluated on the following technical and management qualifications:

5.3.1 Project Team Organization and Availability of Resources

1. Provide an organization chart (showing Team Members, Key Team Members and their firm affiliation) for all phases of the Project from design through final acceptance and warranty and maintenance period. Be certain to identify specific individuals for key functions and show interrelationships and reporting hierarchy. Note whether individuals are performing multiple functions. At a minimum, identify the Key Team Members performing the functions identified below. To the extent that the Design-Builder has additional Key Team Members on their team, the Design-Builder should include those individuals.

- 1.1. Person responsible for the overall management of the Project and design-build contract;

- 1.2. Architectural/Engineering Project/Design Manager;
 - 1.3. Person responsible for overall construction management;
 - 1.4. Person responsible for on-site field supervision and direction and construction (Superintendent);
 - 1.5. Person responsible for safety;
 - 1.6. Person responsible for quality assurance;
 - 1.7. Person responsible for cost controls and budgeting;
 - 1.8. Person responsible for scheduling; and
 - 1.9. Person responsible for systems testing, configuration, and commissioning.
 - 1.10. Principal(s) in charge.
2. Provide a resume for all Key Team Members. Resumes should be no longer than 1 page (not included in overall page count) and should include the following information:
 - 2.1. Description of the individual's proposed Project role;
 - 2.2. Identification of employer and number of years employed by the firm;
 - 2.3. Educational background, professional licenses, and/or certifications;
 - 2.4. Experience relevant to their proposed role on the Project and how their past performance on previous projects will benefit this Project; and
 - 2.5. Based on the information available to the Design-Builder, proposed percentage of time that the Design-Builder intends to assign this individual to the Project.
 3. Provide an explanation of how the Team Members and Key Team Members were selected for this project as well as an outline of the strategy for any additional open contractor or subcontractor participation throughout the project.
 4. Describe the corporate structure of the Design-Builder and complete the corporate structure questionnaire for the Design-Builder and all Team Members in the form set forth in Exhibit C. If the prime Design-Builder is a Joint Venture, all Joint Venture partners must have functional responsibilities for the Project. Describe the duties of each Joint Venture partner.
 5. Provide a clear summary and illustration that the Key Team Members and other individuals important to delivering the project have the availability and workload capacity to meet the project schedule. This summary and illustration should include other active projects being worked on by the individuals and the percentage of available time (by quarter) through the 2nd Quarter of 2025 to deliver the Project.

5.3.2 Demonstrated Past Performance with Relevant Successful Projects of Similar Scope and Complexity

1. Describe the Team's past performance in successfully managing design-build (or a similar integrated delivery model) Projects of Similar Scope and Complexity that include relevant experience related to management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.
2. Describe the Team's past performance in developing integrated design and construction schedules for Projects of Similar Scope and Complexity.
3. Describe the Team's past performance in developing and/or managing costs within a Guaranteed Maximum Price or Lump Sum Price.
4. Describe the Team's past performance working together and/or describe the steps the Team has taken to promote integration and a collaborative working environment. The Owner reserves the right to rank higher those teams who have worked together in a collaborative delivery model.
5. Provide a summary of all lawsuits in the past seven years by or against the Offeror alleging unsatisfactory performance or claims for compensation or liquidated damages. Also provide a list of any claims against Offeror's surety bond over the same period. Provide a full description of the case, jurisdiction, outcome, or pending status (not included in overall page count).

5.3.3 Design-Build Architectural Design, Engineering, and Permitting Past Performance

1. Describe the Design-Builder's past performance in managing the design process.
2. Describe the Team's past performance with designing and permitting Projects of Similar Scope and Complexity. Include a description of any issues or problems that arose on the project and how those issues or problems were resolved.
3. Describe the software used by the Team for design services, including a description of the Building Information Modeling system or other specialized software the Team would utilize for this Project.
4. List all professional registrations and/or certifications that are relevant to the work associated with the Project. [e.g., DBIA, LEED, PMP, PE, AIA]

5.3.4 Design-Build Construction Past Performance

1. Describe the Team's past performance with construction management and construction of Projects of Similar Scope and Complexity. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.
2. Include in the narrative the Team's approach to the following:
 - a. Sequencing construction activities to maximize efficiency and minimize impact on the Owner;
 - b. Assessing whether the Design-Builder has achieved performance requirements;
 - c. Change orders; and
 - d. Configuration, commissioning, and testing Projects of Similar Scope and Complexity.
 - e. Supporting Owner's community outreach efforts.

5.4 Project Approach

1. Describe the Team's Technical and Project Management Approach to delivering on the Project Objectives outlined in Section 2.1 (it is recommended that this section be organized in an outline fashion as tied back to the Project Objectives in Section 2.1).
2. Describe any innovative or value added concepts the Team has identified that may enhance project schedule, quality, or reduce costs.
3. Identify key project risk factors and how the Team plans to mitigate these risks working collaboratively with the Owner.
4. Outline the Team's approach for allowing qualified local and regional contractor participation through a competitive bid process.
5. Describe the Team's approach to using Building Information Modeling (BIM) to complete design and communicate effectively with Owner.

5.5 Corporate Structure Questionnaire

Submit a completed Corporate Structure Questionnaire for Design-Builder and each Team Member, as set forth in Exhibit C.

SECTION 6: ADDITIONAL INFORMATION ABOUT THIS RFQ

6.1 E-Verify

E-Verify is the federal 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. Design-Builder shall ensure that Design-Builder and any subcontractor performing work under this contract: (i) uses E-Verify if required to do so; and (ii) otherwise complies with applicable law.

6.2 Minority and Small Business Participation Outreach Plan – Good Faith Effort

Minority Businesses (MBEs), Women Businesses (WBEs), Disadvantaged Business Enterprises (DBEs) and other small businesses shall have the opportunity to compete fairly in contracts financed in whole or in part with public funds. Consistent with this policy, Union County will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise is discriminated against in connection with the award and

performance of any contract because of sex, race, religion, or national origin. Please see Exhibit D for Union County's Minority and Small Business Guidelines and Outreach Plan for project goals. The selected firm will comply with Union County's Minority and Small Business Guidelines and Outreach Plan (Exhibit D).

6.3 Equal Employment Opportunity

All Offerors will be required to follow Federal Equal Employment Opportunity (EEO) policies. Union County will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age. All submittals submitted in response to this request shall become the property of Union County and as such, may be subject to public review. All payroll taxes, liability and worker's compensation are the sole responsibility of the Offeror. The Offeror understands that an employer/employee relationship does not exist under this contract.

SECTION 7: ATTACHMENTS

LIST OF EXHIBITS

- A. Performance, and Payment Bond Instructions
- B. Insurance Requirements and Instructions
- C. Corporate Structure Questionnaire
- D. Union County Minority and Small Business Guidelines and Outreach Plan
- E. SOQ Offeror Information
- F. Example DBIA – Progressive Design-Build Agreement for Water and Wastewater Projects (Document No. 545), modified
- G. Example DBIA – Standard Form of General Conditions of Contract Between Owner and Design-Builder (Document No. 535), modified

REFERENCE DOCUMENTS

- A. Vicinity and site plan for Crooked Creek WRF.

Exhibit A Performance, and Payment Bond Instructions

Offerors must submit a statement from their bonding company that the Offeror can meet the bonding requirements set forth in Section 5.2.1.

Exhibit B

Insurance Requirements and Instructions

The Design-Builder, from the time of commencement of Services until one year after completion of Services, shall provide and maintain in force with responsible companies with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger, the following minimum insurance coverage:

1.0 Professional Liability Insurance

Errors and Omissions Professional Liability Insurance having minimum limits of \$1,000,000 per claim and \$1,000,000 in the aggregate.

2.0 Commercial General Liability Insurance

Occurrence form including premises and operations coverage, products and completed operations coverage, coverage for independent contractors, personal injury coverage and blanket contractual liability.

Limits of Liability

Bodily Injury/Property Damage Liability	\$1,000,000
Personal Injury Liability	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

Coverage must include:

- 2.1 Policy to be endorsed to provide policy limits "per project".
- 2.2 Policy must name Union County, its Officers, Agents, and Employees as an additional insured as its interests may appear.
- 2.3 Policy must be endorsed to provide a 30-day notice of cancellation.
- 2.4 There shall be no endorsement or modification of coverage for liability due to "explosion", "collapse" or "underground property damage".

3.0 Workers' Compensation

Limits of Liability

Worker's Compensation	statutory
Employer's Liability	
Each accident	\$1,000,000
Policy Limit – Disease	\$1,000,000
Each Employee – Disease	\$1,000,000

Coverage Must Include

- 3.1 Coverage for all states in which operations are conducted.
- 3.2 Policy must be endorsed to provide a 30-day notice of cancellation.

4.0 Business Automobile Liability

(Owned, non-owned, and hired vehicles on an occurrence basis)

Limits of Liability

Combined Single Limit (BI & PD)	\$1,000,000 per accident
---------------------------------	--------------------------

Coverage must include:

- 4.1 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.
- 4.2 Policy must name Union County, its Officers, Agents, and Employees as an additional insured.

5.0 Umbrella Insurance

Limits of Liability

Annual aggregate \$4,000,000

Per Occurrence Limit \$4,000,000

Coverage must include:

- 5.1 Coverage must be "following form" coverage for all underlying coverages set forth above.
- 5.2 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.
- 5.2 Policy must name Union County, its Officers, Agents, and Employees as an additional insured as its interests may appear.

6.0 Builders Risk

Amount of contract for above ground construction.

7.0 Waiver of Subrogation:

Design-Builder waives all right of recovery of damage against Owner, its agents and employees to the extent covered by insurance, and Design-Builder shall obtain from its insurers a waiver of subrogation against Owner and its agents and employees for all insurance coverage except Worker's Compensation and Professional Liability.

8.0 Consultants and Subcontractors

Unless otherwise approved by Owner, Design-Builder shall require all of its design consultants and/or subcontractors to provide the aforementioned coverage, except that the Umbrella Insurance limit may be reduced to \$1,000,000. Any deficiency in the coverage or policy limits of the consultants and/or Subcontractor will be the sole responsibility of Design-Builder.

9.0 The insurance provisions set out above in no way affect, reduce or limit the liability of Design-Builder as stated elsewhere in this Agreement.

10.0 Miscellaneous

- 10.1 The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by Design-Builder under the Design-Build Documents. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the Owner and their officers, members, agents and employees, as additional insureds. The policies of the Design-Builder shall be primary and non-contributing with any insurance carried by Owner.
- 10.2 The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Design-Builder and its representatives who may be engaged in performing any of the work, services or activities in connection with the Project.

11.0 Certificates of Insurance:

Before commencing performance of the Services, Design-Builder and its consultants and/or subcontractors must furnish certificate(s) of insurance evidencing:

- 11.1 Insurance coverage acceptable to Owner.
- 11.2 Effective expiration dates of policies.
- 11.3 Owner must be given thirty (30) days written notice of all cancellation, non-renewable, or material changes in policy.
- 11.4 A waiver of subrogation endorsement has been attached to all policies.
- 11.5 Any deductible and/or self-insured retention.
- 11.6 Any exclusions to the policy which are not part of the standard form.
- 11.7 Include the following language in the Description of Operations Section:

UNION COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECTS TO THE GENERAL LIABILITY INSURANCE POLICY WHERE REQUIRED BY WRITTEN AGREEMENT. INSURANCE IS PRIMARY AND NON-CONTRIBUTORY. WAIVER OF SUBROGATION APPLIES WHEN REQUIRED BY WRITTEN CONTRACT.

11.8 Certificate Holder should be listed as follows:

Union County
500 N. Main Street #130
Monroe, NC 28112

Exhibit C

Corporate Structure Questionnaire

1. Offerors shall complete the following information for the Proposed Design-Builder and all proposed Design-Build Team Members:

Legal Name	
Street Address	
Mailing Address	
Point of Contact	
Position	
Email	
Telephone Number	
Fax Number	
Type of Business	
D-U-N-S Number	
Federal Tax Identification Number	
State Contractor's Registration Number (if applicable)	
State Business License Number (if applicable)	

2. If the Proposed Design-Builder is a Joint Venture, Offerors must:
- a. Submit the above information the Joint Venture as well as for each member of the Joint Venture; and
 - b. Attach a copy of the Joint Venture Agreement to this form.

Exhibit D
Union County Minority and Small Business Guidelines
and Outreach Plan



Union County Government
Minority and Small Business Guidelines
and Outreach Plan

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GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN UNION COUNTY CONSTRUCTION CONTRACTS

In accordance with G.S. §143-128.2, these Guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods on County building construction, erection, alteration, and repair projects (“building projects”) in the amount of \$300,000 or more and on County building projects involving State funding where the total project cost \$100,000 or more.

Union County has established a verifiable goal of 10% for participation by minority businesses in the aforementioned building project contracts. The overall goal will be reviewed annually or as soon as relevant data is available.

SECTION A: INTENT

It is the intent of these Guidelines that Union County, as awarding authority for building projects, and the contractors and subcontractors performing the building project contracts awarded, shall cooperate and in good faith do all things legal, proper and reasonable to achieve the goal of ten percent (10%) for participation by minority businesses in each construction project as mandated by G.S. §143-128.2. Nothing in these Guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

A copy of these Guidelines will be issued with each bid package for applicable Union County building projects. These Guidelines shall apply to all contractors on such projects, regardless of ownership.

SECTION B: DEFINITIONS

1. Minority - a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - e. Female

2. Minority Business - means either of the following:
 - a. A business that meets both of the following conditions:
 1. At least fifty-one percent (51%) of the business is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 2. The management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
 - b. An Employee Stock Ownership Plan company in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals.

The business must also be certified as a Historically Underutilized Business by the North Carolina Department of Administration Office for Historically Underutilized Business.

3. Socially and economically disadvantaged individual - means the same 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."
4. Public Entity - means the State and all public subdivisions and local governmental units.
5. Owner - Union County.
6. Designer - Any person, firm, partnership, or corporation, which has contracted with the Owner to perform architectural or engineering work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
9. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Owner to perform building construction, erection, alteration, or repair work.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

11. HUB Office – N.C. Department of Administration’s Office for Historically Underutilized Businesses.

SECTION C: RESPONSIBILITIES

1. Owner:

The Owner shall do the following:

- a. Implement the attached “Union County’s Minority and Small Business Participation Outreach Plan” to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
- b. Attend the scheduled prebid conference and explain the minority goals and objectives.
- c. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the Owner for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - (1) A description of the work for which the bid is being solicited.
 - (2) The date, time, and location where bids are to be submitted.
 - (3) The name of the individual within the public entity who will be available to answer questions about the project.
 - (4) Where bid documents may be reviewed.
 - (5) Any special requirements that may exist.
- d. Utilize other media, as appropriate, which may be likely to inform potential minority businesses of the bid being sought.
- e. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- f. Review, jointly with the Designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
- g. Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.

- h. Forward documentation showing evidence of implementation of Owner's requirements to the State Construction Office and the HUB Office upon request.

In addition, after a contract has been awarded the Owner shall:

- a. Review prime Contractors' pay applications for compliance with minority business utilization commitments prior to payment.
- b. Submit the report to the HUB Office as required by G.S. 143-128.3(a).

2. Designer:

Under the single-prime bidding, separate prime bidding, dual bidding, construction manager at risk, or alternative contracting method, the Designer must do all of the following:

- a. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
- b. Assist the Owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities and provide documentation of this assistance for the Owner's records.
- c. Maintain documentation of any contacts, correspondence, or conversations with minority business firms made in an attempt to meet the goals and forward the documentation to the Owner.
- d. Review, jointly with the Owner, all requirements of G.S. §143-128.2(c) and G.S. § 143-128-2(f) (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing Good Faith Efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) prior to recommendation of an award.
- e. During construction phase of the project, review "MBE Documentation for Contract Payment" - (Appendix E) for compliance with minority business utilization commitments. Submit Appendix E form with monthly pay applications to the Owner.
- f. Make documentation showing evidence of implementation of Designer's responsibilities available for review by the Owner and State officials upon request.

3. Prime Contractor(s), Construction Manager at Risk, and Its First-Tier Subcontractors:

The following requirements apply to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods,

as well as to all contractors performing as contractors and first-tier subcontractors under construction manager at risk. For purposes of this subsection, the term “contractor(s)” shall also include first-tier subcontractors under a construction manager at risk. The contractors shall:

- a. Attend the scheduled prebid conference and any prebid meetings scheduled by the Owner.
- b. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
- c. At least ten (10) days prior to the scheduled day of bid opening or due date for proposals, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of the following:
 - (1) A description of the work for which the sub bid is being solicited.
 - (2) The date, time, and location where sub bids are to be submitted.
 - (3) The name of the individual within the company who will be available to answer questions about the project.
 - (4) Where bid documents may be reviewed.
 - (5) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.

- d. During the bidding process, comply with the contractor(s) requirements listed in these Guidelines and any contractor requirements listed in Union County’s Minority and Small Business Participation Outreach Plan.
- e. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid (“Identification of HUB Certified/Minority Business Participation” form) and submit affidavit listing Good Faith Efforts (Affidavit A) as required by G.S. §143-128.2(c) and G.S. §143-128.2(f). If the contractor will be performing all of the work with its own workforce, the contractor may submit Affidavit B, Intent to Perform Contract with Own Workforce,” in lieu of Affidavit A. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
- f. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor responsibilities available for review by the Owner and State officials upon request.

4. Minority Business Responsibilities

Union County does not certify minority businesses. Any business which desires to participate as a minority business under these Guidelines will be required to register and become certified as a historically underutilized business (“HUB”) by the North Carolina Department of Administration Office for Historically Underutilized Businesses (“HUB Office”). This system will replace all other HUB certification or registration programs currently (or formerly) used by public entities in North Carolina. Pursuant to G.S. 143-128.4(e), as of July 1, 2009, State agencies and local governments may count **only** those businesses that are certified as HUBs through the new statewide system to determine whether their participation goals have been met. In other words, a business that was registered as a HUB through a local government’s registration system but has not been certified as a HUB through the new statewide system will not count towards that local government’s participation goals.

Businesses seeking HUB certification need to go to:

<https://www.doa.nc.gov/divisions/historically-underutilized-businesses-hub/certifications>.

Minority HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

- a. Attending the scheduled prebid conference.
- b. Responding promptly whether or not they wish to submit a bid when contacted by the Owner or bidders.
- c. Attending training and contractor outreach sessions given by the Owner, contractors and state agencies, when feasible.
- d. Participating in Mentor/Protégé programs, training, or other business development programs offered by the Owner, contractors or state agencies.
- e. Negotiating in good faith with the Owner or contractors.

SECTION D: DISPUTE PROCEDURES

It is the policy of this State that disputes that involve a person’s rights, duties or privileges should be settled through informal procedures. To that end, minority business disputes arising under these Guidelines should be resolved as governed under the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11).

MINORITY BUSINESS CONSTRUCTION CONTRACT PROVISIONS

APPLICATION:

The **Guidelines for Recruitment and Selection of Minority Businesses for Participation in Union County Construction Contracts** are hereby made a part of these contract documents.

MINORITY BUSINESS SUBCONTRACT GOALS:

The goal for participation by minority firms as subcontractors on this project has been set at 10%.

The bidder must identify on its bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. §143-128.2(c) and G.S. 143-128.2(f).

In addition, the lowest responsible, responsive bidder must do one of the following:

(1) Provide Affidavit C that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal.

OR

(2) If the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, is less than the applicable goal, provide Affidavit D as well as documentation of Good Faith Efforts.

OR

(3) Provide Affidavit B, which includes sufficient information for the Owner to determine that the bidder does not customarily subcontract work on this type project.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.

MINIMUM COMPLIANCE REQUIREMENTS:

All written statements, affidavits or intentions made by the bidder shall become a part of the agreement between the Contractor and Union County for the performance of the contract. Failure to comply with any of these statements, affidavits or intentions, or with the minority business Guidelines shall constitute a breach of the contract. A finding by Union County that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of Union County whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, Union County will evaluate all efforts made by the Contractor and will determine compliance with regard to quantity, intensity, and results of these efforts. Bidders are required to earn at least 50 points from the good faith efforts listed below for their bid to be considered responsive. Failure to file a required affidavit or documentation demonstrating that the bidder made the required good faith efforts is grounds for rejection of the bid. Good Faith Efforts include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the Contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. Value = 10 points.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. Value = 10 points.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. Value = 15 points.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- (5) Attending any prebid meetings scheduled by the public Owner. Value = 10 points.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. Value = 20 points.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. Value = 15 points.

- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. Value = 25 points.
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public building construction or repair project when possible. Value = 20 points.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

UNION COUNTY’S MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN

In addition to the good faith efforts set forth in the Guidelines for Recruitment and Selection of Minority Businesses for Participation in Union County Construction Contracts, Union County will also make the following good faith efforts in order to make it feasible for minority businesses to submit successful bids or proposals for contracts for building projects. Union County shall also make the following good faith efforts in the selection process for architectural, engineering, and construction manager at risk services.

1. Work with minority-focused and small business groups that support minority business and small business inclusion in the solicitation of bids. These groups include the Small Business Center Network (SBCN) (Anson & Union Counties), The Small Business and Technology Development Center (SBTDC), and The Union County Chamber of Commerce.
2. Place more emphasis on the importance of soliciting certified minority businesses and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from minority businesses.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business for Participation in Union County Construction Projects and this Outreach Plan (hereinafter referred to collectively as the “MBE Program”) and provide information on G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the MBE Program, and identify opportunities to enhance it, by evaluating minority business participation and compliance and reviewing the “good faith efforts” provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified minority businesses and small businesses that have expressed an interest in Union County projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors plan to participate in the project.
6. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how this MBE Program is working and sharing “best practices” and ideas to improve the program.

7. Participate in education opportunities throughout the community as they become available and offer training sessions to share the County's Outreach Plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to minority businesses, majority contractors and small businesses, and provide information to the general public about the MBE Program, and continue outreach efforts to the business community.
9. Enhance the County's web page by including the MBE Program, listing good faith efforts, and creating links to minority business resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Direct minority businesses to the Statewide historically underutilized business certification program in order to ensure those firms wishing to do business with Union County or any other public entity have access to up to date information.
12. Advertise upcoming bid opportunities in minority-focused media and on the county website at www.unioncountync.gov.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.
14. Document telephone calls, emails and correspondence with or on behalf of minority businesses and encourage interested eligible firms to become NCDOT certified.

Exhibit E

SOQ Offeror Information

Design-Build RFQ #: 2025-004

Crooked Creek WRF Office and Storage Building

Qualification Package Submitted by:

Company Full Legal Name:	
Contact Person for RFQ Process:	
Address:	
City/State/Zip	
Telephone Number:	
Fax Number:	
Email Address:	
<p>Submission of a response to this RFQ constitutes certification that the Offeror and all proposed team members are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Project by any State or Federal department or agency. Submission is also agreement that the County will be notified of any change in this status.</p> <p>The information contained in this Statement of Qualifications package, including its forms and other documents, delivered or to be delivered to the County, is true, accurate, and complete. This Statement of Qualifications package includes all information necessary to ensure that the statements therein do not in whole or in part mislead the County as to any material facts.</p>	
Represented and Warranted by (Signature):	
Printed Name and Title:	
Date Signed:	

Exhibit F
Example DBIA – Progressive Design-Build Agreement
for
Water and Wastewater Projects
(Document No. 545), revised

Progressive Design-Build Agreement for Water and Wastewater Projects

Crooked Creek WRF
Office and Storage Building
Project SP-107
Union County, NC

This Progressive Design-Build Agreement has been developed in conjunction with and endorsed by the Water Design-Build Council.



WATER DESIGN-BUILD COUNCIL
AN ASSOCIATION OF LEADING DESIGN BUILDERS

Document No. 545

First Edition, 2016 with Project-Specific Edits

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





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Progressive Design-Build Agreement for Water and Wastewater Projects

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

This **AGREEMENT** is made as of the _____ day of _____
in the year of 2024, by and between the following parties, for services in connection with the Project
identified below:

OWNER:

(Name and address)

Union County North Carolina
500 North Main Street, Suite 500
Monroe NC 28112

DESIGN-BUILDER:

(Name and address)

PROJECT:

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

Project Name: Crooked Creek WRF
Office and Storage Building

Project SP-107

Project Location: Union County NC

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

Article 1 – General

1.1 Basis of the Document.

1.1.1 This Agreement is based upon standard DBIA (Design Build Institute of America) contract documents. While DBIA's standard contract document has been used as the basis for compiling the contents of this Agreement, all parties are advised that modifications to the standard contract document have been made. As such, all parties are advised to carefully review the specific text of this Agreement in recognition of the fact that it is not an exact match with DBIA's standard forms.

1.2 Duty to Cooperate.

1.2.1 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 this Agreement.

1.3 Definitions.

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

1.4 Design Services.

1.4.1 Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2 – Design-Builder's Services and Responsibilities

2.1 General Services.

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

2.1.2 During Phase 1, Design-Builder will assist Owner in fully developing Owner's Project Criteria. The work involved in progressing from draft Owner's Project Criteria to final Owner's Project Criteria shall be compensated as part of the Design-Builder's Phase 1 services.

2.2 Phased Services.

2.2.1 **Phase 1 Services (Design and Preconstruction)** - Design-Builder shall perform the services of design, pricing, piloting, site inspection, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in

Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price Amendment for Phase 2, as set forth in Section 2.3 below. Design work following the establishment of the Contract Price Amendment shall also be considered Phase 1 work. Further, if the Design-Builder's Guaranteed Price Proposal is rejected in accordance with Section 2.3.2.4 (iii) below, any design work required to complete the design shall be considered Phase 1 work. The Contract Price Amendment for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's compensation for Phase 1 services is set forth in Article 7 herein.

2.2.2 Phase 2 (Construction) Services - Design-Builder's Phase 2 services shall consist of the procurement of all materials and equipment for the Project; the performance of construction services for the Project; the start-up, testing, commissioning, and acceptance of the Project; training of Owner's staff; the provision of warranty services; and all other such work as described in the Contract Price Amendment.

2.3 Guaranteed Price Proposal.

2.3.1 When design work has progressed to an appropriate stage, Design-Builder shall submit a proposal to Owner (the "Guaranteed Price Proposal") for the construction of the Project for a Guaranteed Price (GP). Owner shall have the sole authority to determine whether to proceed with converting the Guaranteed Price into a Lump Sum or a Guaranteed Maximum Price implementation. The Guaranteed Price Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The estimated Cost of the Work, inclusive of any Design-Builder's Contingency and all other costs defined in Article 7 hereof. The Cost of Work estimate shall be consistent with the format and detail of the Owner-Approved Cost Model.

2.3.1.2 Details associated with Guaranteed Maximum Price implementation of the contract. Such details should include the Shared Savings Provision, the Design-Builder's Fee, descriptions of how costs will be tracked and reported to Owner, descriptions of which costs will be subject to the Design Builder's Fee, and other such details as necessary for Guaranteed Maximum Price implementation of the Guaranteed Price.

2.3.1.3 Details associated with Lump Sum implementation of the contract. Such details should include a Lump Sum discount (if applicable), a listing of project milestones, details regarding how invoicing for Work will correspond to those project milestones, and other such details as necessary for Lump Sum implementation of the Guaranteed Price.

2.3.1.4 The final Owner's Project Criteria and the Construction Documents which serve as the basis for the Guaranteed Price Proposal.

2.3.1.5 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Guaranteed Price Proposal, which list is intended to supplement the information contained in the drawings and specifications

2.3.1.6 A list of all Construction Documents used as a basis for the Guaranteed Price Proposal.

2.3.1.7 The scheduled Substantial Completion date upon which the Guaranteed Price Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion date is based.

Article 4 – Interpretation and Intent

4.1 Design-Builder and Owner, at the time of acceptance of the Guaranteed Price Proposal by Owner in accordance with Section 2.3 hereof, shall carefully review all the Contract Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Guaranteed Price Proposal.

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

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

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

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

Article 5 – Ownership of Work Product

5.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 5.2 through 5.5 below.

5.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

5.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 9 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to

complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following:

5.3.1 The Owner's decision to reject the Guaranteed Price Proposal and proceed as set forth in Section 2.3.2.4 (iii) shall not be considered Termination for Convenience. Under such circumstances, the Design-Builder shall complete a bid-ready design of the facility suitable for construction.

5.3.2 The Design-Builder shall be subject to the Standard of Care for all design professional services performed to execute the Work. Standard of Care shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

5.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 5.2 above.

5.5 Owner's Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product following Termination for Convenience by the Owner, Owner will waive its right to recover damages against Design-Builder as a result of said termination.

Article 6 – Contract Time

6.1 Date of Commencement.

6.1.1 The Phase 1 services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

Contract Note: The date required in this section will be determined and formalized upon acceptance of the Guaranteed Price Proposal. As such, this field is expected to remain blank until the Contract Price Amendment is approved.

6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows:

Completion of 30% Design

Completion of 60% Design

Submittal of Guaranteed Price Proposal

Contract Notes: Owner and Design-Builder will set interim milestone dates for the items above during contract negotiations. Additional interim milestones may be set at the time of the Contract Price Amendment

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

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

6.3 Time is of the Essence.

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

6.4 Liquidated Damages

6.4.1 Liquidated Damages for Substantial Completion. Design-Builder understands that if Substantial Completion of Construction Work is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner five hundred Dollars (\$500) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Commented [A1]: Need a recommendation on the amount

Contract Note: Liquidated Damages will be negotiated at the time of the Contract Price Amendment

6.4.2 Liquidated Damages for Final Completion. Design-Builder understands that if Final Completion is not achieved within _____ days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within _____ (_____) days of Substantial Completion, Design-Builder shall pay to Owner two hundred Dollars (\$200), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

Commented [A2]: Need a recommendation on the amount

6.4.3 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion.

6.4.4 Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be five hundred thousand Dollars (\$500,000).

Commented [A3]: Need a recommendation on the cap

Article 7 – Contract Price

7.1 Phase 1 Price

7.1.1 Maximum Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract an amount not to exceed _____ Dollars (\$) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.1.2 Basis of Compensation. Design-Builder's compensation for Phase 1 work will be provided on the basis of actual hours of work performed, hourly rates agreed upon by Owner and Design-Builder, and the following not-to-exceed prices:

Item: Cost

Item: Cost

Contract Note: Owner and Design-Builder may agree upon lump sum or not-to-exceed prices for services such as geotechnical exploration of the site, utility potholing, piloting equipment, etc. after selection of Design-Builder. Prices negotiated should be consistent with the Design-Builder's proposal for the work.

7.1.3 Phase 1 Schedule of Values. Prior to the first Application for Payment for Phase 1 Work, the Design-Builder shall submit a schedule of values to the Owner which allocates the entire Phase 1 Contract Price to the various portions of the Phase 1 work. This schedule of values shall be used as a basis for providing authorization to proceed for various portions of the Phase 1 Work and for subsequently reviewing applications for payment for such work. The Owner's payments to the Design-Builder shall not surpass the values set in the schedule of values.

7.2 Guaranteed Price

7.2.1 Timing of Guaranteed Price. During Phase 1 work, the Design-Builder shall provide the Owner with regular updates to the cost estimate. When design has been advanced to a degree that the Owner deems sufficient, the Owner will direct the Design-Builder to develop a Guaranteed Price Proposal in accordance with Section 2.3. Upon acceptance of the Guaranteed Price Proposal, the price proposed therein shall be considered the Guaranteed Price for the Work.

7.2.2 Basis of Guaranteed Price. As required by the Contract Documents, the Design-Builder shall supply the Owner with regular Cost of Work estimates throughout Phase 1 which are developed in an open-book, transparent manner. All assumptions, accounting measures, and estimates which support Guaranteed Price development shall be available for Owner's review. The Guaranteed Price shall be based upon the estimated Cost of Work, the Design-Builder's proposed fees, pass-through costs, and any contingency values.

7.2.3 Implementation of Guaranteed Price. The Guaranteed Price for the Project may be implemented as either a Guaranteed Maximum Price or a Lump Sum at the sole discretion of the Owner. In the event that the Guaranteed Price is implemented as a Guaranteed Maximum Price, the requirements of Section 7.3 will govern payment for the Work. In the event that the Guaranteed Price is implemented as a Lump Sum, the requirements of Section 7.4 will govern payment for the Work. The Owner and Design-Builder hereby agree that the Guaranteed Price will be implemented via the following (select the appropriate option):

_____ Guaranteed Maximum Price

_____ Lump Sum

7.2.4 Guaranteed Price Assurance. Design-Builder guarantees that it shall not exceed the Guaranteed Price (GP) of _____ dollars (\$_____). Documents used as basis for the GP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GP, **provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of _____ dollars (\$_____)**, and as set forth in the Contract Price Amendment ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents.

7.2.5 Guaranteed Price Scope Contingency. The Guaranteed Price includes a Contingency in the amount of _____ dollars (\$_____) which is available to the Design-Builder upon approval by the Owner for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. Contingency shall be developed as part on the Guaranteed Price based on identified risks opportunities related specific Work scope that cannot be accurately estimated at the time of Guaranteed Price development. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price.

7.2.5.1 Cap on Rework Contingency. Notwithstanding the above, the Design-Builder guarantees that the contingency for the correction of defective, damaged, or nonconforming work; design errors; and omissions shall not exceed _____ dollars (\$_____).

Contract Note: These values will be determined at the time of the Contract Price Amendment.

7.3 Guaranteed Maximum Price (GMP) implementation of the Guaranteed Price.

Contract Note: This Section 7.3 to be completed and binding only in the event that a GMP delivery of the project is chosen by the Owner at the time of the Contract Price Amendment.

7.3.1 Design Builder's Fee. If the Owner elects to implement a Guaranteed Maximum Price the following fees shall be applied to Costs of Work:

Design-Builder's Fee on Self-Performed Work: _____ %

Design-Builder's Fee on Subcontracted Work: _____ %

At the time of the Contract Price Amendment, a maximum Design-Builder's Fee will be established based upon the estimated Cost of Work, the Design-Builder's Fees specified above, and the anticipated work allocation between the Design-Builder and subcontractors.

The maximum Design-Builder's Fee for the project shall be: \$ _____

Payment of the Design-Builder's fee will be made based upon the actual Cost of Work associated with the project.

The Design-Builder's fee will be applied only to the Costs of Work as described in Section 7.5.

Contract Note: i.e. If the project ends under budget, the fees actually paid to the Design-Builder will be less than the maximum fee specified above.

7.3.2 Change Orders and Design Builder's Fee.

7.3.2.1 Additive Change Orders. Additive Change Orders which increase the Cost of Work for the project shall be subject to the applicable Design-Builder's fee as specified in Section 7.3.1.

7.3.2.2 Deductive Change Orders. The Design-Builder's fee shall apply only to Work actually performed on the Project. As such, any deductive change order which results in a reduction to the Cost of Work shall result in a reduction to the total Design-Builder's fee for the Work.

7.3.3 Shared Savings Provision. If the sum of the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

Percentage Allocation to Design-Builder:	_____ %
Percentage Allocation to Owner:	+ _____ %
Total Percentage of Savings Shared:	100%

7.3.3.1 Savings shall be calculated and paid as part of final payment under Section 8.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

7.3.4 Schedule of Values. Prior to the first Application for Payment, the Design-Builder shall submit a schedule of values to the Owner which allocates the entire Guaranteed Maximum Price to the various portions of the work. This schedule of values shall be used as a basis for reviewing applications for payment. The Owner's payments to the Design-Builder shall not surpass the values set in the schedule of values.

Contract Note: If the Design-Builder is running over budget (for example, has spent 60% of the Cost of Work at only 40% completion), the Owner will only pay the Design-Builder for the portion of the work that has been completed.

7.3.5 Ongoing Monitoring. If the Guaranteed Price is implemented as a Guaranteed Maximum Price, the Design-Builder shall maintain open books for the Owner's review of all project costs throughout the construction process.

7.4 Lump Sum (LS) implementation of the Guaranteed Price.

7.4.1 If Owner elects to implement a Lump Sum approach to the Guaranteed Price, the Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$) ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

made on account of Design-Builder's Fee. Otherwise, Design-Builder's Fee shall be billed on the basis of the applicable Cost of Work.

8.2.4 The value of any Application for Payment submitted by the Design-Builder shall not exceed the value appropriate for the actual percentage of Work completed.

Contract Note: Barring any Change Orders, if the Design-Builder begins to run overbudget, compensation will only be provided for the actual percentage of work performed. (i.e. You can't bill 60% of the contract price when you're only 40% complete.)

8.3 Retainage on Progress Payments.

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

8.3.2 Within thirty five (35) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.7 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.4 of the General Conditions of Contract.

8.4 Final Payment.

8.4.1 Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.8 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty five (35) days after Owner's receipt of the Final Application for Payment, provided that: (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.8 of the General Conditions of Contract.

8.5 Interest.

8.5.1 Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one and a half percent (1.5%) per month until paid.

8.6 Record Keeping and Finance Controls.

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

Article 9 – Termination for Convenience

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

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

9.1.2 The reasonable costs and expenses attributable to such termination, including demobilization; and

9.1.3 Overhead and profit in the amount of _____ percent (_____%) on the sum of items 9.1.1 and 9.1.2 above.

Contract Note: The percentage for overhead and profit shall be equal to the Design-Builder's fee for Self-Performed work as defined in the Guaranteed Price Proposal, or, if the Guaranteed Price Proposal has not yet been accepted, as defined in the Proposal submitted during Project Procurement Activities.

9.2 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 5.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 5.

9.3 Design Stage "Off Ramp". The Owner's decision to terminate the agreement in accordance with Section 2.3.2.4(iii) shall not be deemed termination for convenience.

Article 10 – Officers of the Parties

10.1 Owner's Officers.

10.1.1 Owner designates the individual listed below as its Principal in Charge, which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions of Contract:

Hyong Yi
Union County Public Works Administrator
Hyong.yi@unioncountync.gov
(704) 296-4212

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

Fred Braun
Senior Engineer
fred.braun@unioncountync.gov
(704) 283-3874

10.2 Design-Builder's Officers.

10.2.1 Design-Builder designates the individual listed below as its Principal in Charge, which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions of Contract:

(Identify individual's name, title, address, and telephone numbers.)

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

(Identify individual's name, title, address, and telephone numbers.)

Article 11 – Bonds and Insurance

11.1 Insurance.

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

11.2 Bonds and Other Performance Security.

11.2.1 Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond. (100% of Contract Price Amendment Value)

Payment Bond. (100% of Contract Price Amendment Value)

Article 12 – Other Provisions

12.1 Other provisions, if any, are as follows:

(Insert any additional provisions.)

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria

Contract Note: Draft Owner's Project Criteria has been provided with the RFQ document. Revisions will be made during Phase 1, and the Owner's Project Criteria will be updated.

Commented [A6]: Is this referring to section 2.1 project objectives? Need to be clear and consistent in references

Exhibit B – Scope of Services

Contract Note: A Preliminary Scope of Phase 1 Services has been provided with the RFQ document. Revisions, if required, will be made prior to signing the Contract and will be updated as needed and at the Contract Price Amendment.

Exhibit C – Owner's Permit List

Contract Note: A Preliminary Owner's Permit List has been provided with the RFQ document. Revisions, if required, will be made prior to signing the Contract and will be updated as needed and at the Contract Price Amendment.

Exhibit D – Project Funding Requirements

Contract Note: Project Funding Requirements have been provided in the form of the MN PFA Contract Packet, which is attached to the RFP document.

Exhibit E – Site Security Requirements

Contract Note: Site Security Requirements will be developed and added at a later date.

Exhibit F – Performance Incentive Arrangements

Exhibit G – Performance Standards

Commented [A7]: Recommend removing and replacing with "others as required"

Article 13 – Limitation of Liability

13.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed one hundred fifty percent (150%) of the Contract Price. The parties agree that specific consideration has been given by the Design-Builder for this limitation and that it is deemed adequate.

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

[the remainder of this page left intentionally blank]

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

Exhibit G
Example DBIA – Standard Form of General Conditions
of Contract Between Owner and Design-Builder
(Document No. 535), revised

General Conditions of Contract Between Owner and Design-Builder

Crooked Creek WRF Office and Storage Building Project
SP-107
Union County, NC

Document No. 535

Second Edition, 2010 with Project-Specific Edits

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Washington, D.C.





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Article 1 – General

1.1 Basis of General Conditions of Contract

1.1.1 These General Conditions of Contract are based upon standard DBIA (Design-Build Institute of America) contract documents. While DBIA's standard contract document has been used as the basis for compiling the contents of these General Conditions of Contract, all parties are advised that modifications to the standard contract document have been made. As such, all parties are advised to carefully review the specific text of this General Conditions of Contract document in recognition of the fact that it is not an exact match with DBIA's standard forms.

1.2 Mutual Obligations

1.2.1 *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.

1.3 Basic Definitions

Acceptance Testing refers to testing procedures required to prove that the applicable performance standards are met in full. An Acceptance Testing plan shall be developed by the Owner and the Design-Builder during Phase 1 of the project.

Agreement refers to the executed contract between Owner and Design-Builder under DBIA Document No. 545, *Progressive Design-Build Agreement for Water and Wastewater Projects*.

Application for Payment is a request for payment issued by the Design-Builder to the Owner as described in Section 6.3.

Basis of Design Documents are as follows: these General Conditions of Contract, the Agreement, any amendments or revisions to the General Conditions of Contract or the Agreement made in accordance with Article 9 of these General Conditions of Contract, and all Exhibits to the Agreement. Basis of Design Documents may also include engineering reports, pilot testing data, and other such information which serves to inform design and is compiled by the Design-Builder during Phase 1 of the Project.

Certificate of Substantial Completion is a certificate issued to the Design-Builder by the Owner certifying that the project or a portion of the project has been sufficiently completed such that the Owner may take possession of the facility for beneficial use.

Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder which adjusts the scope of Work, Contract Price, and/or Contract Time. Change Orders are further defined in Section 9.1.

Construction Documents are the documents to be prepared or assembled by the Design-Builder during Phase 1 of the Project which are consistent with the Basis of Design Documents (unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder). The documents shall serve as the basis for the Contract Price Amendment and the Phase 2 scope of work.

Construction Work is comprised of all construction, materials staging and transportation, construction inspection, facilities testing, demolition, and other services performed during Phase 2 of the project. In general, Construction Work is equivalent to Phase 2 work.

Contract Documents are the documents which shall govern project work. The specific documents considered to be Contract Documents are listed in Article 3 of the Agreement.

Contract Price refers to the price which the Owner agrees to pay the Design-Builder in exchange for the performance of the work. The Contract Price for Phase 1 will take the form of a not-to-exceed value. The Contract Price for Phase 2 may either take the form of a Lump Sum value or a Guaranteed Maximum Price depending upon the Owner's selected implementation method.

Contract Price Amendment refers to the amendment to the contract which will be made following the Owner's acceptance of the GP Proposal. This amendment will establish the Guaranteed Price for Phase 2 of the Project.

Contract Time refers the amount of time allowed for Work on the project. Contract Time is established in the Agreement and may be revised as necessary throughout the project.

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

Design-Builder refers to the team selected to perform the Work through the Project Procurement Activities. The Design-Builder is a signatory to the General Conditions of Contract and the Agreement.

Design-Builder's Fee refers to the fee which provides for the Design-Builder's overhead and profit on the Work.

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 the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

Exhibits to the Agreement are documents which have been attached to these General Conditions of Contract and the Agreement. Such Exhibits to Contract Documents shall be considered as a fully enforceable and binding part of the Agreement and shall include the Phase 1 Scope of Services, Owner's Project Criteria, Permitting Responsibilities, and other such documents.

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 and the submission of all documents set forth in Section 6.8.2.

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

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

Guaranteed Maximum Price refers to a potential means of implementing the Guaranteed Price for the project. Establishment of a Guaranteed Maximum Price generally means that the Design-Builder will be compensated on the basis of verifiable project costs with the addition of approved markups for overhead and profit. Under this delivery method, the Design-Builder is responsible for any cost-overruns, and any cost-underruns may be subject to a Shared Savings Provision.

Guaranteed Price means the price which is established in the Guaranteed Price Proposal and agreed to by the Owner. The Guaranteed Price may take the form of a Lump Sum or a Guaranteed Maximum Price at the Owner's discretion. The Guaranteed Price may be amended through change orders during Phase 2 work.

Guaranteed Price (GP) Proposal means that proposal developed by Design-Builder in accordance with Section 2.3 of the Agreement.

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. Hazardous Conditions may also refer to any substance which, if exposed to raw or treated drinking water, could compromise the safety of the water supply.

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.

Lump Sum refers to a potential means of implementing the Guaranteed Price for the project. Establishment of a Lump Sum price generally means that the Design-Builder will be compensated on the basis of completed project milestones in accordance with a pre-defined schedule of values. Compensation shall include a fixed markup for overhead and profit.

Notice to Proceed refers to a written order given by the Owner to the Design-Builder which directs the Design-Builder to proceed with a specified portion of the Work.

Owner refers to the Board of Water Commissioners doing business as Saint Paul Regional Water Services.

Owner's Permit List refers to an attachment to these Contract Documents which lists permits required for the project and associated responsibilities.

Owner's Project Criteria refers to an attachment to these Contract Documents which describes the Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements, water quality requirements, and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria will be revised during Phase 1 through mutual collaboration between the Owner and the Design-Builder.

Phase 1 includes all work performed by the Design-Builder prior to the Contract Price Amendment as well as all design work performed on the project, regardless of timing.

Phase 2 includes all work accomplished after the establishment of a Contract Price Amendment with the exception of any outstanding design work.

Principal in Charge refers to the individuals specified as such in Article 10 of the Agreement.

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

Project Manager refers to the individuals specified as such in Article 10 of the Agreement.

Project Procurement Activities refer to formal procurement efforts undertaken by Saint Paul Regional Water Services and the City of Saint Paul in order to select the best-value Design-Builder. The Request for Qualifications and the Request for Proposal issued by the City of Saint Paul and responses submitted by the Design-Builder are part of the Project Procurement Activities

Punch List refers to a formal accounting of all outstanding work which remains to be completed before Final Acceptance. Punch List work will be identified at the time that the Certificate of Substantial Completion is issued.

Request for Proposals refers to the document issued by the Owner to solicit proposals during the Project Procurement Activities. Responses to this RFP (proposals) served as the basis for selecting the Design-Builder offering the best value to the Owner.

Self-Performed Work means any work which is performed by the Design-Builder or any affiliate specified on the submitted Statement of Qualifications during Project Procurement Activities.

Shared Savings Provision refers to a provision under which the Owner and Design-Builder agree to share the cost savings associated with any underrun of Project expenses under the Guaranteed Maximum Price delivery model.

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

Statement of Qualifications refers to the document submitted by the Design-Builder in response to SPRWS's Request for Qualification during the Project Procurement Activities.

Subcontracted Work is any work which is not performed by the Design-Builder or any affiliate specified on the submitted Statement of Qualifications during Project Procurement Activities

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

Substantial Completion or *Substantially Complete* means that the Project has been sufficiently completed and has passed all Acceptance Testing. A Certificate of Substantial Completion will be issued upon achievement of Substantial Completion.

Termination for Convenience refers to the Owner's decision to release the Design-Builder from work in accordance with Article 9 of the Agreement.

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

Article 2 – Design-Builder’s Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder’s Project Manager (as defined in Section 10.1 of the Agreement) shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder’s Project Manager shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder’s Project Manager may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Key Personnel identified in Exhibit XX to the Agreement shall not be replaced without the mutual agreement of the Owner and the Design-Builder.

Contract Note: These Key Personnel should be the same Key Personnel identified in the Design-Builder’s Statement of Qualifications.

2.1.3 During Phase 1, Design-Builder shall provide Owner with a written monthly status report as described in the Phase 1 Scope of Services.

2.1.3 During Phase 2, Design-Builder shall provide Owner with a written monthly status report detailing the progress of the Construction 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 Construction Work; (iv) status of the contingency account to the extent provided for in the Agreement; and (v) other items that require resolution so as not to jeopardize Design-Builder’s ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.4 During Phase 1, the Design-Builder shall coordinate bi-weekly progress meetings with the Owner’s Project Manager. During Phase 2, the Design-Builder shall coordinate weekly progress meetings with the Owner’s Project Manager. Such weekly meetings shall include verbal updates on the progress of the Construction Work, including each of the topics discussed in Section 2.1.3 above.

Commented [JS1]: Coordinate with scope document

2.1.5 Unless a schedule for the execution of the Construction Work has been attached to the Agreement as an exhibit at the time the Contract Price Amendment is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.6 hereof, a schedule for the execution of the Construction Work for Owner’s review and response. The schedule shall indicate the dates for the start and completion of the various stages of Construction Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised monthly or as required by conditions and progress of the Construction Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Construction Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner’s review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.6 The parties will meet within seven (7) days after execution of the Contract Price Amendment to discuss issues affecting the administration of the Construction 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.

2.1.7 Owner shall provide documents as described in Section 3.2 of these General Conditions of Contract. In the event that such documents are found insufficient for project needs, the Design-Builder shall be responsible for collecting additional information. The Owner and Design-Builder shall work together to determine the appropriate scope and compensation for additional surveying, geotechnical exploration, utility potholing, etc.

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, licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Design Development Services.

2.3.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Section 3.1.2. Following Owner's review of design submissions, Design-Builder shall promptly revise and modify the submittals so as to fully address all Owner comments and shall deliver to Owner revised submittals for review.

2.3.2 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, the Construction Documents in accordance with the procedures set forth in Section 2.3.1 above. Design-Builder shall proceed with construction in accordance with the Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.3.3 Owner's review or approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.3.4 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 Construction Work to permit construction to proceed on that portion of the Construction Work prior to completion of the Construction Documents for the entire Construction Work.

2.4 Legal Requirements.

2.4.1 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.

2.4.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement which demonstrably and meaningfully impact the performance of the Work, or if a Guaranteed Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed 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 Government Approvals and Permits.

2.5.1 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.

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

2.6 Design-Builder's Phase 2 Services.

2.6.1 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, commissioning, Acceptance Testing, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.6.2 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. All means, methods, sequences, and techniques of construction, however, shall be consistent with Owner-accepted plans for maintenance of plant operations.

2.6.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. All subcontracted work shall comply with PFA (MN Public Facilities Authority) requirements associated with project funding and any other commitments related to the inclusion of Disadvantaged Business Enterprise (DBE) firms specified by the Design-Builder during Project Procurement Activities.

2.6.4 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, including but not limited to any third-party beneficiary rights.

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

2.6.6 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 regular operations of the existing water treatment facility or 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 Design-Builder's Responsibilities for Substantial Completion and Facility Testing Procedures

2.7.1 During Phase 1, the Design-Builder and Owner shall collaborate to develop testing plans for the facility. Each successive, mutually-approved revision to these plans shall be considered a Contract Document and shall specify testing standards which the Design-Builder is contractually obligated to meet. Such testing requirements will include, but may not be limited to, Startup and Commissioning Testing, Functional Testing, Milestone Testing, and Acceptance Testing. The Design-Builder shall be contractually obligated to meet the minimum requirements for each phase of facility testing which are described in the Owner's Project Criteria document.

2.7.2 Facility Startup. The Design-Builder shall be responsible for demonstrating that facilities have been properly designed, constructed, and powered in accordance with the Startup and Commissioning Plan. Certificates of Proper Installation, including signatures from the manufacturer, shall be provided at the time of facility startup. Further requirements for facility startup are described in the Owner's Project Criteria document.

2.7.3 Functional Testing. The Design-Builder shall be responsible for demonstrating that facilities operate in the intended manner and that no operational flaws are evident in accordance with the Startup and Commissioning Plan. Further requirements for Functional Testing are described in the Owner's Project Criteria document.

2.7.4 Milestone Testing. For any Project components which are constructed and operated prior to completion of the entire facility, the Design-Builder will be required to demonstrate that the individual Project components are capable of satisfactorily meeting pertinent water quality regulations in accordance with the Startup and Commissioning Plan. Milestone Testing may be bypassed and the Design-Builder may proceed directly to Acceptance Testing in the event that all Project components are put into operation concurrently.

If the Design-Builder's project phasing plans require that pre-existing water treatment infrastructure be demolished prior to Acceptance Testing of the facility, the Design-Builder shall demonstrate (by means of successfully Milestone Testing the newly installed, analogous infrastructure) that the pre-existing infrastructure is no longer necessary to provide acceptable water quality and water volumes.

Further requirements for Milestone Testing are described in the Owner's Project Criteria document.

2.7.5 Acceptance Testing. Following the successful Startup, Functional Testing, and (if applicable) Milestone Testing for all Project components, the Design-Builder shall be required to demonstrate that the full facility meets all requirements defined in the Owner's Project Criteria, including all Performance Criteria, in accordance with the Owner-approved Acceptance Testing Plan.

Further requirements for Milestone Testing are described in the Owner's Project Criteria document.

Commented [JS2]: Coordinate with referenced document. We include project objectives in the RFQ but do not have a document or attachment titled "Owner's Project Criteria"

2.7.5.1 Design Professional Services and Acceptance Testing. The design professional services shall be performed to achieve all requirements as defined in the Owner's Project Criteria.

2.7.6 Substantial Completion. Following successful Acceptance Testing, the Project shall be deemed Substantially Complete, and the Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's safety representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The safety representative shall make documented daily inspections of the Site and shall hold documented 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 Project Manager 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 2.7 is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Responsibility for Project Security.

2.9.1 Design-Builder recognizes that the Site is deemed to be of critical importance to public health, and, as such, recognizes the importance of maintaining Site security throughout the project.

2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner by the Owner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 Except as modified by any other performance or latent defects requirements herein, Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents within a period of one year from the date of Substantial Completion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.11.2 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 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.

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

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 of interim design submissions and Construction Documents. For submittal milestones (i.e., 30% design, 60% design, GP Proposal, and significant alterations to design concepts), Owner shall review and provide comment on such submittals within twenty-one (21) days after receipt of the submissions. For intermediate submittals, Owner shall review and provide comment within fourteen (14) days after the receipt of the submissions. Such review timelines may be adjusted for time-sensitive critical path submittals provided that both Owner and Design Builder agree to the revised review period in advance.

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 Owner shall furnish the Design-Builder with various types of information during Phase 1 services. The types of the information that the Owner will be required to provide and the extent to which the Design-Builder may rely upon that information is described below:

3.2.1.1 To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines. Design-Builder may rely upon surveys for determining general locations of buried pipelines and utilities but shall be responsible for potholing during Phase 1 activities to determine precise locations of utilities.

3.2.1.2 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site. Where provided, geotechnical borings and data may be relied upon. Design-Builder shall be responsible for developing its own conclusions and engineering analysis based upon the geotechnical data provided.

3.2.1.5 To the extent available, record drawings of any existing structures at the Site. The information contained in such drawings shall be verified by the Design-Builder through inspection of the site. All information derived from provided record drawings shall be field-verified by the Design-Builder except in instances in which field-verification would require actual demolitions or damage to the facility.

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

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

3.3 Financial Information.

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

3.3.2 Design-Builder shall cooperate with the requirements of Owner's lenders or other financial sources. Design-Builder shall be responsible for meeting any adjustments to the requirements of the Owner's lenders or other financial sources made after the execution of the Agreement. In the event that funding requirements change during the course of the Project and meaningfully alter the obligations and responsibilities of the Design-Builder, a Change Order may be utilized to ensure that Design-Builder is appropriately compensated for such adjustments.

3.4 Owner's Project Manager.

3.4.1 Owner's Project Manager (as identified in Section 10.1 of the Agreement) 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 Project Manager shall also provide Design-Builder with 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 failure to provide notice shall not relieve Design-Builder of its responsibility to perform work in accordance with the Contract Documents. Owner's Project Manager shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner with respect to routine project management.

3.5 Government Approvals and Permits.

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

Contract Note: Owner's Permit List will be modified during Phase 1 and finalized at the Contract Price Amendment.

Commented [JS3]: Owner is not obtaining any permits for this project, eliminate?

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

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall require its separate contractors to 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.

3.7 Legal Requirements.

3.7.1 The Contract Price and/or Contract Time(s) will be adjusted to compensate the Owner for the effects of any changes in Legal Requirements enacted after the date of the Agreement which demonstrably and meaningfully impact the performance of the Work, or if a Contract Price Amendment is established after the date of the Agreement, the date the parties agree upon the Guaranteed Price. Such effects may include, without limitation, revisions to existing laws, tariffs, and other regulatory requirements that allow for faster and/or less-costly design and construction of the facility.

Article 4 – Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site. Design-Builder may resume work or a specified portion of the work if both Owner and Design-Builder mutually agree that such work can be safely resumed.

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

4.1.3 In lieu of retaining a qualified independent expert, Owner reserves the right to direct the Design-Builder to negotiate a subcontract with an independent expert. In the event that this option is executed, Design-Builder shall be fairly compensated for the expenses incurred in subcontracting with an independent expert. Owner also reserves the right to direct the Design-Builder to self-perform assessment and mitigation work, provided that such work falls within the competencies of the Design-Builder.

4.1.4 Design-Builder shall be obligated to resume Work at the affected area of the Project only after the independent 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.

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

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

4.2 Differing Site Conditions.

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

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

Article 5 – Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Prior to commencing work, 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 of North Carolina and with a minimum rating of A.

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 design work, Design-Builder shall procure and maintain the following insurance coverages: General Liability, Auto Liability, Professional Liability (Including Errors and Omissions), Worker's Compensation, and Property Insurance. The limit of the Property Insurance policy must be commensurate with the value of any property owned by the Design-Builder's and kept on the Site during the Design phase of the project. The limits of all other policies shall be as specified in the Insurance Exhibit to the Agreement.

5.1.4 Prior to commencing any construction services hereunder, and annually thereafter, Design-Builder shall provide Owner with certificates documenting any exclusions and evidencing that (i) all insurance coverages listed in the Insurance Exhibit to the Agreement have been fulfilled as required by the Contract Documents and 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 are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Reserved

5.3 Reserved

5.4 Bonds and Other Performance Security.

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

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in North Carolina.

Article 6 – Payment

6.1 Phase 1 Payments

6.1.1 All Phase 1 Work will be compensated in accordance with Section 7.1 of the Agreement.

6.2 Phase 2 Payments

6.2.1 All Phase 2 Work will be compensated in accordance with the applicable portions of Article 7 of the Agreement.

6.3 Monthly Progress Payments.

6.3.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.6 hereof.

6.3.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance, (iii) Owner will receive the equipment and materials free and clear of all liens and encumbrances at the appropriate time, and (iv) Owner is satisfied that the early purchase of equipment and materials offers significant benefits to the Construction Work.

6.3.3 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon Substantial Completion.

6.4 Withholding of Payments.

6.4.1 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 and the reasons and contractual basis for the withholding. 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.

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

6.5 Right to Stop Work and Interest.

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

6.6 Design-Builder's Payment Obligations.

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

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 or before the time of submission of its final Application for Payment, Design-Builder shall provide all deliverables required by the Agreement in addition to the following:

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

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

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

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

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

6.7.2.6 All documentation demonstrating that Acceptance Testing and Punch List items have been fully completed.

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

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List (as defined in the Certificate of Substantial Completion) if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder in accordance with Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the final payment the reasonable value (as determined by the Owner) of completion of such deficient work until such work is completed.

Article 7 – Indemnification

7.1 Patent and Copyright Infringement.

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

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

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

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

7.2 Tax Claim Indemnification.

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

7.3 Payment Claim Indemnification.

7.3.1 Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

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

7.5 Reserved

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 6 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. 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 (as defined in Section 4.2), 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 may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless such events meet the criteria defined in Section 8.2.3 below. Design-Builder shall demonstrate that delays in the Work directly caused additional and meaningful costs to the Design-Builder in order to obtain an adjustment to contract price.

8.2.3 For Force Majeure Events, Design-Builder shall be entitled to an increase in the Contract Price providing that: (i) said events must exceed forty five (45) cumulative days before Design-Builder is entitled to additional compensation; and (ii) said additional compensation shall be limited to the direct costs and expenses Design-Builder can demonstrate it has reasonably actually incurred as a result of such event.

Article 9 – Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- 9.1.1.1 The scope of the change in the Work;
- 9.1.1.2 The amount of the adjustment to the Contract Price; and
- 9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents. Change Orders shall not be issued for such design services, estimating services, etc. if the value of the associated work does not exceed \$5,000. If the Design-Builder anticipates that the value of such work may exceed \$5,000, the Design-Builder shall provide the Owner with written notice prior to the commencement of the work, indicating (i) that a Change Order may be necessary to compensate the Design-Builder for the compilation of the proposal, and (ii) the estimated value of the work associated with completing the requested proposal.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

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

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted Lump Sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including overhead and profit, as set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10 – Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

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

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Project Manager and Owner's Project Manager which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Project Manager and Owner's Project Manager, Design-Builder's Principal in Charge and Owner's Principal in Charge, 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 Principals in Charge, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Principals in Charge 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 Principals in Charge the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

10.3 Interpretation and Venue.

10.3.1 This Agreement will be interpreted and construed according to the laws of the State of North Carolina. All litigation related to this Agreement shall be resolved in the State courts of Union County, North Carolina.

10.3.2 The prevailing party in any litigation, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 Consequential Damages.

10.5.1 Notwithstanding anything herein to the contrary (except as set forth in Section 10.5.2 below), neither Design-Builder nor Owner shall be liable to the other for any consequential damages, whether arising in contract, warranty, tort (excluding gross negligence), strict liability, or otherwise, including but not limited to losses of use, profits, business, reputation, or financing.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 6 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11 – Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed ninety (90) consecutive days or aggregate more than one hundred eighty (180) days during the duration of the Project.

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

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

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

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If, in the Owner's judgement, 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, in the Owner's judgement, 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. If the Agreement establishes a Guaranteed 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 9 of the Agreement. In such instance, the Owner and Design-Builder may mutually agree to amend the provisions of Article 9 of the agreement to reach a mutually agreeable resolution.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within 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 and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for ninety (90) consecutive days, or more than one hundred eighty (180) days during the duration of the Project, because of 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 eighty (180) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 9 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.

Article 12 – Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications, three-dimensional modeling, and other Work may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work in electronic form, the transmitting party does not transfer or assign its rights in the Work. The rights in the Electronic Data shall be as set forth in Article 5 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 accordance with Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13 -- Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

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

13.3 Successorship.

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

13.4 Governing Law.

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

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

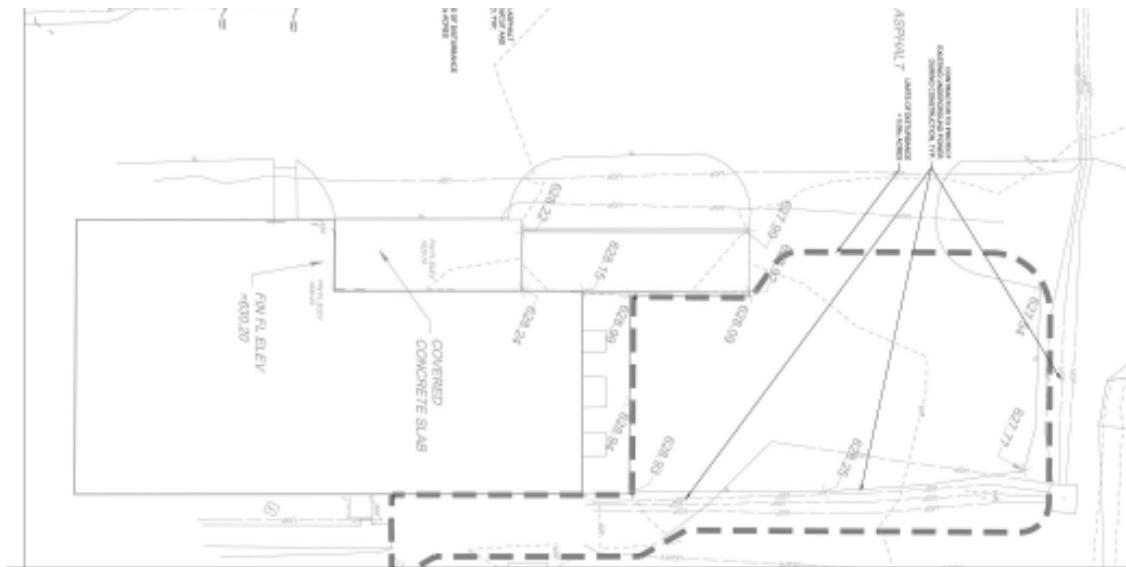
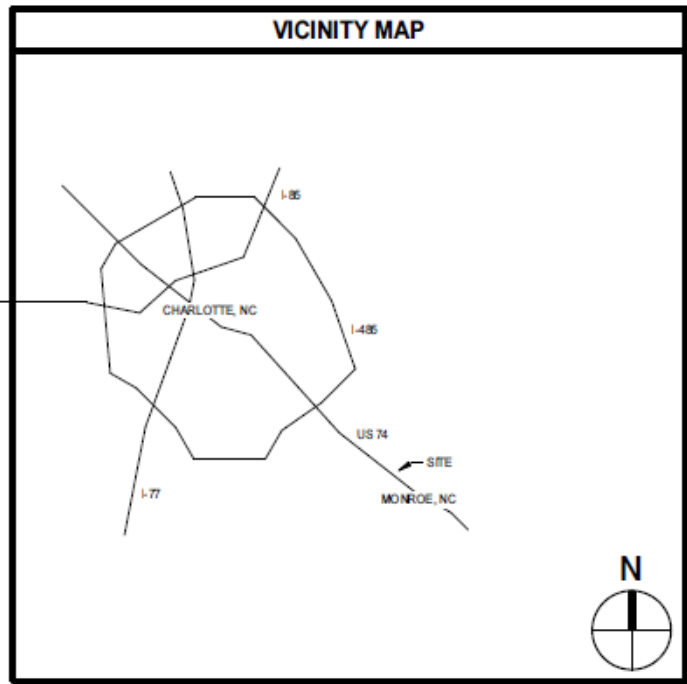
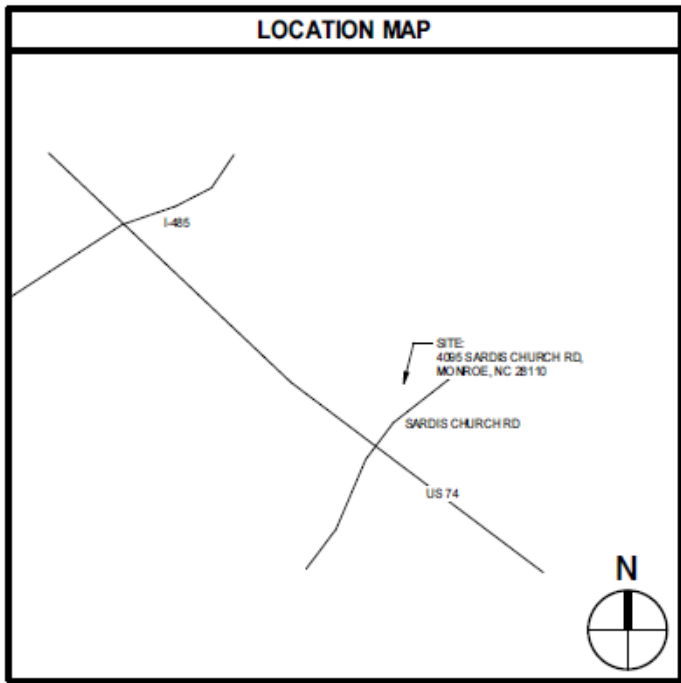
13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted via email to the proper receiving party and subsequently confirmed as received by the receiving party. Any notice provided via email shall be considered valid only when the receiving party has confirmed the receipt of the notice via return email. If no return email confirmation is provided, the transmitting party shall communicate with the receiving party to determine if the transmittal was unsuccessful. Upon confirmation of the receipt, the notice shall be considered to have been validly given at the time that the email was sent.

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.

Reference Documents

Vicinity Map



SP 107 Crooked Creek WRF Building Project - Site and Vicinity Maps

