Orange Water and Sewer Authority

Our community's trusted partner for clean water and environmental protection.

REQUEST FOR QUALIFICATIONS (RFQ)

for the

MORGAN CREEK AERIAL REPLACEMENTS

PROGRESSIVE DESIGN-BUILD PROJECT

CIP PROJECT # 376-05

Orange Water and Sewer Authority
400 Jones Ferry Road
Carrboro, North Carolina

Dated: **March 17, 2025**

Proposal Submittal Deadline: **April 17, 2025, at 2:00PM**

OWASA Contact: Mohisin Rasheed, mrasheed@owasa.org, (919) 537-4245

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SECTION 1: BACKGROUND

1.1 Introduction

This Request for Proposals (RFQ) for Progressive Design-Build Services for the design and construction of the Morgan Creek Aerial Replacement (Project) is issued by Orange Water and Sewer Authority (Owner) to invite the submittal of Proposals according to the requirements set forth in this RFQ.

The Owner is planning improvements to seven (7) gravity sanitary sewer aerial crossings located along Morgan Creek. In 2023 a condition assessment of these aerial crossings was completed after multiple failures occurred over the last several years. These seven (7) crossings were reported as critical for immediate action to avoid future failures and sanitary sewer overflows within Morgan Creek. Defects identified in the report include but are not limited to manholes partially or nearly exposed in the creek bank, significantly deteriorated pipe walls, and exposed pier bases.

The Project will include the planning, design, and construction necessary to place the Project in full operation according to requirements contained herein. The Project is to be delivered in two phases, using the progressive design-build delivery method, as follows:

- Phase 1 Services (preconstruction phase): Prepare design to 60-percent complete, as described in Draft Progressive Design-Build Agreement (Agreement) (Scope of Design-Builder Services), and prepare a Phase 2 Services Proposal including a Guaranteed Maximum Price (GMP) for consideration by the Owner; and
- Phase 2 Services (final design and construction phase): Complete design, construction, and post-construction tasks, including required testing, and any applicable operator training and support.

The Proposals will be reviewed and evaluated using the selection process described in Section 5. The capitalized terms in this RFQ have the meanings as first used in the text of this RFQ and as defined in Attachment A (Definition of Terms).

At completion of an evaluation process described herein, the Owner will select a Proposer to award, or enter into negotiations for award of, the Agreement (see Attachment B –Progressive Design-Build Agreement). The award of the Agreement will be made by OWASA after recommendation by the Selection Committee.

This RFQ is subject to revision after the date of issuance via written addenda. Any such addendum will be posted on the Owner's website and will be distributed directly to potential Proposers who have registered with the Owner as described herein. It is each Proposer's responsibility to obtain all RFQ addenda prior to submitting its Proposal.

In no event will the Owner be liable for any costs incurred by any Proposer or any other party in developing or submitting a Proposal, including but not limited to preparation, copying, postage, delivery fees, and expenses associated with any site tours, demonstrations, or presentations. Notwithstanding anything to the contrary, the Owner assumes no obligation by issuing this RFQ or any Attachments.

1.2 This section is reserved

1.3 Owner's Objectives

The Owner's objectives for delivery of the Project are referenced in *ATTACHMENT B – PDB AGREEMENT* as *EXHIBIT A – PROJECT CRITERIA*.

By selecting the progressive design-build delivery method for the Project, the Owner is committed to working in close collaboration with the Design-Builder during the preconstruction phase to develop the Project's design to achieve the Project objectives and to obtain a mutually agreeable GMP for delivery of the Project. As set forth in the Agreement, certain technical requirements and standards will apply to the Project's design.

SECTION 2: PROJECT OVERVIEW

2.1 Project Scope

The Owner's project scope for delivery of the Project is referenced in *ATTACHMENT B – PDB AGREEMENT* as *EXHIBIT B– SCOPE*.

2.2 Project Budget and Funding

This project is funded through OWASA Capital Improvement Program with estimated budget of $2,500,000.

2.3 Project Schedule

The Owner's high-level project schedule for delivery of the Project is referenced in *ATTACHMENT B – PDB AGREEMENT* as *EXHIBIT A – PROJECT CRITERIA*.

Contract Times for completion of Phase 2 will commence to run upon issuance of the Notice to Proceed with Phase 2 Services. Contract Times will be as follows:

- Completion of Phase 1 Services – January 2026
- Substantial Completion of Phase 2 Services – February 2027
- Final Completion of Phase 2 Services – April 2027

SECTION 3: PROCUREMENT PROCESS

3.1 Communications and Owner Contact

All communications, questions, or comments shall be submitted by e-mail and shall specifically reference this RFQ. All communication should be directed to the Owner Contact at the following e-mail addresses:

Mohisin Rasheed (mrasheed@owasa.org) including Nick Seeba (Nicholas.seeba@hdrinc.com) as carbon copy.

Any oral communication from the Owner Contact or other individuals is non-binding. No contact with Owner's staff, Owner's Board members, or any Owner's representatives or public official concerning the Project during the procurement process is allowed. A violation of this provision may result in disqualification of Proposer.

Addenda will be issued to clarify, correct, supplement, or change the RFQ. Interpretations or clarifications considered necessary in response to such questions will be issued by Addenda and sent to all parties recorded as having received the RFQ. Questions received less than 10 calendar days before the date for receipt of Proposals may not be answered. Only responses outlined in Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the RFQ unless outlined in an Addenda that expressly modifies or supplements the RFQ.

3.2 Procurement Schedule

The Owner's high-level project schedule for delivery of the Project is referenced in ATTACHMENT B – PDB AGREEMENT as EXHIBIT A – PROJECT CRITERIA.

The Owner reserves the right to modify the Project Procurement Schedule via Addenda.

3.3 Pre-Proposal Meeting

Owner will hold a mandatory pre-proposal meeting at 170 Old Mason Farm Road on April 3, 2025 at 1:00pm. Meeting will last an hour maximum. a. Each Proposer is limited to four (4) attendees.

3.4 Proposer Interviews

If deemed beneficial by the evaluation committee, the highest-scoring Proposers will be provided the opportunity to present their Project approach during formal interviews. Interviews are intended to allow the Proposers to further explain their written Proposal. Interview format will be provided by the Owner at the time of the short-list notification.

SECTION 4: PROPOSAL SUBMISSION REQUIREMENTS

4.1 Submittal Place and Deadline

Proposals must be submitted to:

ATTN: Mohisin Rasheed, P.E.
OWASA Administrative Building
400 Jones Ferry Road
Carrboro, NC 27510

Proposals must be received by the Owner no later than 2:00 pm, local time, April 17, 2025 .

Four (4) hard copy documents (one original with original signatures) of the Proposal, as well as one (1) electronic version on a USB flash drive in PDF format, must be provided.

Proposal items must be submitted in a sealed package. Each sealed package containing the Proposal items must be plainly marked on the outside as:

Proposal for Morgan Creek Aerial Replacements
CIP No. 376-05

The package should bear on the outside the name and address of the Proposer.

Each Proposer assumes full responsibility for timely delivery of its Proposal at the required location. Any Proposals received after the submittal deadline will be deemed non-responsive.

The Owner may reject any or all Proposals. Any Proposal may be withdrawn by the Proposer prior to the above-scheduled time for the submittal of Proposals or authorized postponement thereof. The Proposal must be signed by an individual authorized to bind the proposer. The Proposal shall contain a statement to the effect that the Proposal will remain valid for a period of at least one hundred twenty (120) days from the proposal opening. If the Owner is unable to award the Agreement within the time specified, the time may be extended by mutual agreement between the Owner and Proposer.

Owner reserves the right, in its discretion, to offer all responsible Proposers, found by the Owner to have submitted proposals reasonably susceptible of being selected for award, an opportunity for discussion, negotiation, and revision, which shall occur after submission of Proposals but prior to any award.

4.2 Submission Format

The Proposal must not exceed 20 total pages (10 pages, double-sided, most or all 8½ x 11 inches with 1-inch or greater margins). Page count excludes the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, fee and rate proposal, and

appendices. A maximum of [2] of the total pages may be 11 x 17-inch tri-fold format. Eleven-point font or larger must be used.

SOQs that exceed the page limit may be rejected. The Owner, at its sole discretion, reserves the right to remove pages from the sections of any non-conforming submittals to bring each non-conforming submittal within the page count requirement.

4.3 Submission Content

The content requirements set forth in this RFQ represent the minimum content requirements for the Proposal. The Proposal should be tabbed in the format as shown below. The Proposal, however, should not contain standard marketing or other general materials. It is the Proposer's responsibility to modify such materials so that only directly relevant information is included in the Proposal.

The Proposal must include the following information in the order listed:

- Transmittal Letter
- Part 1 – Executive Summary
- Part 2 – Experience and Capabilities
- Part 3 – Project Approach
- Part 4 – Project Concepts
- Part 5 – Proposed Implementation and Project Schedule
- Part 6 – Disadvantaged Business Enterprise Participation Plan
- SOQ Appendix A – Forms for Affirmation of Compliance
- SOQ Appendix B – Resumes
- SOQ Appendix C – Supporting Documentation of the Proposal

4.3.1 Transmittal Letter

Proposers must submit a transmittal letter (maximum 1 - 8½ x 11 inch page) on the Proposer's (Design-Builder) letterhead. It must be signed by a representative of the Design-Builder who is authorized to sign such material and to commit the Proposer to the obligations contained in the Proposal. The transmittal letter must include the name, address, phone number, and e-mail address for the Proposer Contact and must specify who would be the Design-Builder's signatory to any contract documents executed with the Owner. The transmittal letter may include other information deemed relevant by the Proposer. The transmittal letter must briefly describe the organization of the Design-Builder's team including:

The identification of the lead firm or firms and any other partners or subconsultants.

- General information about the Design-Builder, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non- professional), years in business, and firm licensing.

- Identification of how the Design-Builder's legal structure is organized, i.e., as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. If the legal structure of the Design-Builder is not yet formed, identify how it is proposed to be organized.
- Where the Design-Builder intends to maintain its offices for the Project and where the majority of the design work will be performed.

The transmittal letter must refer to SOQ Appendix A of the Proposal based on the forms detailed in RFQ *ATTACHMENT B – PDB AGREEMENT* as *EXHIBIT J – FORM OF AFFIRMATION OF COMPLIANCE* and any other forms required to be submitted with the Proposal.

4.3.2 Part 1 – Executive Summary

The executive summary must include a concise overview of the key elements of the Proposal. The executive summary shall not be used to convey additional information not found elsewhere in the Proposal.

4.3.3 Part 2 – Experience and Capabilities

4.3.3.1 Project Team and Key Personnel

Describe the composition, organization, and management of the Design-Builder's proposed Project Team. As applicable, identify the owners of the Design-Builder (e.g., shareholders, members, partners, and the like) who hold a voting, capital, or equity interest of 10 percent or more. Describe the Design-Builder's approach to work seamlessly as one entity and highlight past project collaborations that the proposed Key Personnel have completed together. Describe the Design-Builder's approach to managing Key Personnel. Key information should be provided in separate subsections, as follows:

Project Team:

- Identify any other firms (such as subcontractors and subconsultants) included on the Project Team along with the Design-Builder and describe the scope of the Design-Builder's and each firms' services and responsibilities throughout the Project.
- Clearly identify the firms that will perform the engineering design and the construction. For Phase 2 Services, include any subcontractors known at this time.
- Provide evidence of required licensing for the Design-Builder and other firms on the Design-Builder's Project Team in SOQ Appendix C of the Proposal.
- Describe the Design-Builder's approach to the management of subcontractors and subconsultants.

Key Personnel:

- Identify all Key Personnel (and their firm affiliations) on the Project Team and describe their specific responsibilities throughout the Project

- Indicate the commitment of all Key Personnel in terms of an estimated percentage of time throughout the Project.
- Provide resumes for all Key Personnel in Appendix B of the Proposal – Resumes. Limit resumes to one page per individual and include:
    - Academic and professional qualifications
    - Professional registration
    - Experience as is relevant to the Project and to the individual's specified role on the Project

Organization Chart:

- Provide one organization chart showing:
    - Reporting relationships and responsibilities of the Design-Builder and any other firms
    - Reporting relationships and responsibilities of all Key Personnel (along with their firm affiliations)

The Design-Builder's proposed Key Personnel will be incorporated into the Agreement. Any change in the firms or Key Personnel included in the Proposal shall require Owner approval as defined in the Agreement.

4.3.3.2 Design-Builder Team Experience

Proposers shall provide the applicable technical experience and qualifications of the Design-Builder, its significant subcontractors, any additional Project Team members with key experience related to the Project, and individual Project Team members related to the design, construction, acceptance, commissioning, obtaining of regulatory permits and approvals, and training of Owner staff in the operation and maintenance of the Project that should apply. The Proposal must describe the performance history and experience of the Project Team on similar projects.

The experience of the individual firms included on the Project Team will be considered and scored based on relevance to the Project. The proposed individual Key Personnel will be evaluated for experience, expertise, and reputation on previous work and on work similar to the Project. This evaluation will be based on the corporate experience and capabilities of the Project Team as well as the experience and capabilities of Key Personnel. Legal matters will be evaluated.

Reference Projects:

The Proposer shall submit descriptions of up to four (4) reference projects to demonstrate relevant experience.

Each project description shall contain at least the following information:

- Name of owner

- Owner reference and contact information for a reference that is knowledgeable of the proposer's work and is available to be contacted
- Role of Proposer
- Contract value (initial contract value plus any change orders that increased contract value and why)
- Year started and year completed (initial contract duration and final contract duration at completion)
- Description of the project showing relevance to this Project
- DBE participation plan and actual participation results
- Firms and Key Personnel that participated in project and are included in this Proposal, along with a clear description of the project role and responsibility of each.

In addition, provide a summary table to cross-reference the Project Team (firms and Key Personnel) with participation in the reference projects.

Safety

Provide a summary description of the Design-Builder's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past five years. The following safety records must be provided for the Design-Builder for the current and past five years:

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau. (The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or X-mod.)
- The days-away-from-work injury incidence rate. A day-away-from-work injury is an injury that prevents an employee from returning to his or her next regularly scheduled shift. The incidence rate is calculated by multiplying the number of days-away-from-work injuries for the particular year by 200,000 and then dividing the product by the person-hours worked for that year.

Demonstrated safety records on prior construction and the proposed Project safety plan will be evaluated.

4.3.3.3 Design-Builder Capability

The Proposal must provide a brief description of the following information pertaining to factors or events that have the potential to adversely impact the Design-Builder's capability to perform its contractual commitments. Detailed explanations, if needed, and supporting information may be provided in SOQ Appendix C of the Proposal as indicated below.

- **Material adverse changes in financial position**. Describe any material historical, existing, or anticipated changes in financial position, including mergers, acquisitions,

takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.

- **Legal proceedings and judgments.** List and briefly describe any pending or past (within five years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to Owner. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the Design-Builder's General Counsel.
- **Completion of contracts.** Has the Design-Builder failed to complete any contract, or has any contract been terminated due to alleged poor performance or default, within the past five years? Has Design-Builder been assessed liquidated damages for late completion of any project within the past five years? If so, describe the circumstances.
- **Violation of laws.** Has the Design-Builder been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination, or prevailing wages within the past five years? If so, describe the circumstances.
- **Payment and performance bonds.** In Appendix C of the Proposal, provide a letter from the Design-Builder's surety to provide evidence of the ability of the Design-Builder to provide payment and performance bonds of at least $**5** Million for this Project. The surety must be authorized by law to do business in the State of North Carolina and must have an A.M. Best Company Rating of A- or better. The surety must also be listed in the U.S. Department of Treasury's Circular 570.
- **Insurance.** In SOQ Appendix C of the Proposal, provide a letter or Certificates of Insurance from the Design-Builder's insurance company stating Design-Builder's ability to acquire and provide the insurance coverage required by the Exhibit E of the Agreement (Indemnity and Insurance Requirements).

If any of the above questions is answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Proposer's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Design-Builder's ability to perform any contractual commitments to Owner. Include these responses in Appendix C of the Proposal. The answers to these questions and any associated discussion shall be provided in the form of a written certification that is signed by an officer or duly authorized official of the Proposer (including evidence of authorization if not provided elsewhere in the Proposal).

The Proposer must notify the Owner of any changes subsequent to submission of the Proposal and before the selection process is completed (and in the case of the selected Proposer before execution of the Agreement).

4.3.4 Part 3 – Project Approach

Provide a conceptual description of the Design-Builder's approach for managing and performing its services during Phase 1 and Phase 2 of the Project that will satisfy the Owner's objectives for this Project. The following items should be addressed (if applicable):

- Collaboration and Communication: Discuss how a collaborative relationship with the Owner would be established during the execution of Phase 1 Services for design development, scheduling, and cost estimating and in Phase 2 Services. Describe the plan for coordination and communication with Owner staff and internally among Project Team members, as well as how the design team will interact with the Owner and how those communications will enhance the success of the project. Include brief approach to external communication with those outside of the owner (regulatory, permitting authorities, etc.)
- Leadership Approach: Describe how the Project Manager, Principal-in-Charge, and organizational structure outlined in Part 2 support efficient service delivery within the Design-Build Team, subcontractors, and sub-consultants
- Division of Work: Describe what activities (work) will be self-performed versus managed by subcontractor or subconsultant.
- Any proposed Changes to Exhibit B of the Agreement (Scope of Design-Builder Services): Discuss any proposed changes to the Scope of Design-Builder Services, as outlined in Exhibit B of the Agreement, and how these proposed changes would enhance the execution of the Work.
- Design and Construction Interface: Discuss how design and construction processes will interface (including how value engineering and constructability issues will be addressed)
- Critical Work Components: Identify the work components critical to the Project's success and how these components would be achieved
- Issue Resolution: Describe the methods for identifying and resolving issues. Include any description of organization, structure, processes used from internal (Design-Builder and Owner) or external (regulatory, other)
- Cost Development: Provide a description of cost model development during the development of design and leading up to formal cost estimate submittals, including the use of an open book cost estimation process, iterative design impacts to cost analysis, and establishment of the proposed Phase 2 Contract Price and GMP (including the amount of cost contingency)
- Schedule Management: Discuss the proposed process for maintaining adherence to the GMP and schedule in the construction phase
- Risk Management: Discuss Design-Builder's vision of key risk factors and how key risk factors will be identified and managed throughout Phase 1 and Phase 2 of the Project
- Start-Up Approach and Transition to Operation: Describe how the Design-Builder would transition through the completion of installation, functional testing, start-up and testing, training, and Owner acceptance for the various equipment systems. Include a discussion of how the Design-Builder proposes to incorporate start-up and testing planning and execution, as required in Exhibit B of the Agreement-(Scope of Design-Builder Services), into the Design-Builder's overall start-up and operations transition plan.
- Quality Management: Describe the plans, actions, and procedures that will be incorporated into the Design-Builder's Quality Management Plan, and which will ensure quality, accuracy, and integrity of work throughout Phase 1 and Phase 2 of the Project.
- Tools: Describe the types of management, software, technological, or other tools that will be used and how these will provide cost, schedule, quality, or other efficiencies

4.3.5 Part 4 – Project Concepts

Proposers should discuss their understanding of the Project's technical concepts provided in the Owner's Project Criteria. Any innovative concepts that the Proposer suggests for the Owner to consider that may be different from or that may enhance the technical concepts in the Owner's Project Criteria concepts should be presented. Proposer also should consider addressing the following if they apply:

- Design concepts for operator safety
- Energy efficiency considerations
- Operator access and operability considerations
- Site development and layout, supporting infrastructure, and utilities concepts
- Design requirements and performance guarantees

4.3.6 Part 5 – Proposed Implementation and Project Schedule

Proposer shall discuss any implementation issues that it foresees not already covered in Parts 4 or 5.

The Proposer shall provide and discuss a Project schedule that presents the major activities necessary to implement the Project and includes the project durations identified in Section 4 of this RFQ. The schedule should be based on the Proposer's design-build approach discussed in Part 3 and the Proposer's proposed comprehensive management plan. The schedule should commence with the Notice to Proceed with Phase 1 Services and extend to Final Completion of construction. The schedule shall clearly distinguish between Phase 1 and Phase 2 activities. The Proposer should indicate start and finish dates for proposed activities, key interim milestones, and other time-critical points in the schedule. The proposed schedule shall include all proposed major activities for completing the Project, including ordering and delivery of equipment requiring long lead times (as best can be determined at the time of Proposal submission), and shall identify the interrelationship between tasks, including the critical path. Major activities identified shall also include but not be limited to Phase 1 scope tasks, construction, operation and maintenance, and training periods.

In addition, Proposers shall identify the expected durations for obtaining regulatory and government approvals and the dates when receipt of approvals is anticipated. Proposers shall identify specific Owner responsibilities, anticipated Owner actions, and suggested Owner review periods during Phase 1. A minimum of 20 working days shall be included for Owner reviews of design submittals. The Project schedule shall clearly identify any float built into the schedule.

The Proposer's demonstrated understanding of the Project's time constraints and milestones and of the interaction and sequencing of construction tasks will be evaluated. The Proposal should address how resource levels will be addressed to meet the critical path. The Proposal should provide evidence of the Proposer's ability to secure all labor, materials, and equipment within the proposed schedule. Inclusion of tie-ins to and shutdowns of existing facilities are important considerations.

Significant elements of the schedule and its implementation should be discussed in Part 5. The CPM schedule itself may be placed in Appendix C of the Proposal.

4.3.7 Part 6 – Disadvantaged Business Enterprise Participation Plan

The Owner requires that the selected Design-Builder develop and implement a plan to engage in required good faith efforts to achieve, at a minimum, goals for DBE participation as follows:

- Goals for MWBE participation for Phase 2 of the Project – TEN percent (10%)

The Owner desires that the Design-Builder implement a plan to exceed these goals.

Proposers should identify the specific methods and processes that will be utilized to achieve these goals and the Proposer's plan to incorporate good faith efforts (see Exhibit D of the Agreement). Proposers should identify the achievable goal proposed by Proposer and the Proposer's plan to achieve that goal. Identify the specific trades the Proposer anticipates utilizing to achieve the goals. Identify the specific products, materials, or equipment and the potential DBE suppliers, if known at this time. Include in the Proposal a description of the Proposer's past efforts to develop plans for DBE participation and actual history of goal achievement on past projects, as evidence of the Proposer's ability to plan and implement successful DBE participation program.

4.3.8 This section is reserved

4.3.9 Appendices

4.3.9.1 SOQ Appendix A – Forms for Affirmation of Compliance

The Proposer must complete, execute, and include in SOQ Appendix A of the Proposal the following forms:

- SOQ Attachment A - Acknowledgement of Addenda
- SOQ Attachment B - Non-Collusion Form
- SOQ Attachment C - Non-Collusion Affidavit for Subcontractor
- SOQ Attachment D - Equal Employment Opportunity Certification
- SOQ Attachment E - Non-discrimination Clause
- SOQ Attachment F - E-Verify
- SOQ Attachment G - Conflict of Interest
- SOQ Attachment H - Iran Divestment Act
- SOQ Attachment I - Companies Boycotting Israel Divestment Act

A failure by a Proposer to submit these items may result in the Proposal being declared non-responsive.

Forms for the above Appendix A requirement may be found in Exhibit J of the included draft agreement.

4.3.9.2 SOQ Appendix B – Resumes

This appendix shall include the resumes of Key Personnel as described in Part 2 of the Proposal. Each resume shall be limited to one (1) page.

4.3.9.3 SOQ Appendix C – Supporting Documentation

This appendix shall include all supporting documentation as requested previously in this Section 4 of the RFQ.

4.3.9.4 This section is reserved

SECTION 5: PROPOSAL EVALUATION CRITERIA

5.1 General

The Owner's Evaluation Committee (Committee) will review and evaluate the Proposals according to the requirements and criteria outlined in this Section 6. During the Proposal evaluation process, written questions or requests for clarification from the Owner may be submitted to the Proposer regarding its Proposal or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Proposer from further consideration. In addition, the Owner will require that all Proposers participate in interviews if they are deemed beneficial by the owner.

5.2 Responsiveness

Each Proposal will be reviewed to determine whether it is responsive to the RFQ. Failure to comply with the requirements of this RFQ may result in a Proposal being deemed as non-responsive. At its sole discretion, however, the Committee may waive any such failure to meet a requirement of this RFQ and may request clarification or additional information to remedy a failure.

5.3 Comparative Evaluation Criteria

The Committee will evaluate and rank the responsive Proposals by applying the weighted comparative evaluation criteria set forth below:

Proposal Part	Criteria	Weight, %
2	Experience and Capabilities	35
3	Project Approach	25
4	Project Concepts	20
5	Project Implementation and Schedule	15
6	DBE Participation Plan	5

In ranking the proposals, the Committee will use a 100-point scale whereby the maximum points awarded for each of the evaluation criteria will be based on the percentage weight set forth above.

5.4 This section is reserved

5.5 Ranking

In ranking the proposals, the Committee will add the points from each criterion to calculate the Proposer's total points. Proposers will be ranked according to final points awarded.

5.6 Selection

After the evaluation process is complete, the Committee will make the selection of the awarded Proposer. The awarded Proposer will be given a written notice of award, and the process to execute the Agreement will begin. After execution of the Agreement, the Owner will issue the Notice to Proceed with Phase 1 Services.

SECTION 6: CONDITIONS FOR PROPOSERS

6.1 Ineligible Firms and Individuals

HDR Engineering of the Carolinas, Inc. (HDR) is serving in an advisory capacity to the Owner for this Project and is therefore not eligible to assist or participate with any Proposer that submits a Proposal for the Project.

6.2 Conflict of Interest

The following laws mandate the public disclosure of certain information concerning persons doing business or seeking to do business with the Owner, including affiliations and business and financial relationships such persons may have with Owner officers.

- North Carolina G.S. 14-234 imposes rules concerning conflicts and potential conflicts of interest for certain consultants and contractors to local governments. See the Certification of Absence of Conflict of Interest to be provided in SOQ Appendix A of the Proposal.
- OWASA imposes restrictions on conflicts and potential conflicts of interest involving public officials and employees with private interests.
- Other laws, rules, and regulations prohibit conflicts and potential conflicts of interest, as well as the appearance of such conflicts.

6.3 Proprietary Information

Information submitted by the Proposer in the procurement process shall be subject to disclosure after award in accordance with the North Carolina Open Records Act. Proprietary information must be identified and be accompanied by a signed affidavit outlining the redacted information. Entire Proposals may not be deemed proprietary.

6.4 Rights of Owner

In connection with this procurement process, including the receipt and evaluation of Proposals and award of the Agreement, Owner reserves to itself (at its sole discretion and without assuming any liability therefor) all rights available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFQ, in whole or in part, at any time prior to the execution of the Agreement.
- Modify the procurement schedule.
- Waive deficiencies, informalities, and irregularities in a Proposal and accept and review a non-conforming Proposal.
- Suspend and terminate the procurement process or terminate evaluations of Proposals received.
- Permit corrections to data submitted with any Proposal.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Proposers to seek an improved understanding of any information contained in a Proposal.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals.
- Seek clarification from any Proposer to fully understand information provided in the Proposal and to help evaluate and rank the Proposers.
- Declare as non-responsive a Proposal containing exceptions, additions, qualifications, or conditions not called for in the RFQ or otherwise not acceptable to the Owner.
- Conduct an independent investigation of any information, including prior experience, included in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Proposer during the evaluation of its Proposal.

6.5 Obligation to Keep Project Team Intact

Proposers are advised that all firms and Key Personnel identified in the Proposal shall remain on the Project Team for the duration of the procurement process and, as set forth in the Agreement, for the duration of the Project. (The anticipated timeframes for award of the Agreement and for completion of the Project are set forth in paragraphs 2.3 and 3.2 of this RFQ.) If extraordinary circumstances require a change, the Design-Builder must submit the proposed change in writing to the Owner, who, at its sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Design-Builder's control. Unauthorized changes to the Project Team at any time during the procurement process may result in the Proposer being deemed non-responsive. These requirements, and designated Key Personnel, will be made part of the Agreement.

6.6 Payment and Performance Bonds

Proposers are advised that payment and performance bonds are required to be provided by the Design-Builder upon execution of the Agreement as outlined in Article 10 of the Agreement.

6.7 Protests

In the event that, after the acceptance of a Proposal, any unsuccessful Proposer wishes to contest such action, a written “Notice of Contest” must be filed with the Owner’s Executive Director no later than close of business on the fifth business day after the selection of successful Proposer. Failure to timely file such notice shall forever preclude the filing of a contest of the award or any civil action in the courts of the State of North Carolina or of the United States.

ATTACHMENT A

DEFINITION OF TERMS

Terms used herein are defined in the General Conditions and modified by Orange Water and Sewer Authority (Copyright 2013) shall have the meanings assigned to them in the General Conditions as modified, changed, added to or deleted by the General Conditions.

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

B. Alternate Key Personnel: Individuals identified by the Proposer who will be assigned to the Project in the event a Key Personnel individual is unable to fulfill the Key Personnel role. In such an event, an Alternate Key Personnel individual shall become a Key Personnel individual.

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

D. Design-Builder: The individual or entity with which the Owner has contracted for the performance of the Work, as designated in the Agreement. An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of general contracting are performed by a licensed general contractor.

E. Design professional: Any professional licensed under Chapters 83A, 89A, or 89C of the General Statutes.

F. Joint venture: Two or more individuals, partnerships, corporations, or combinations thereof that join together to bid on and construct a project.

G. Licensed contractor: A person or entity whose scope of work proposed for the project requires that it be licensed in accordance with the provisions of Article 1 of Chapter 87 of the General Statutes.

H. Owner: Orange Water and Sewer Authority (OWASA) and/or OWASA's Owners Agent (OA).

I. Procurement: The Owner's process for selecting a Project Team for this Project.

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

K. Proposer: The corporate entity or firm responding to this RFQ by submitting the SOQ and that if selected by the Owner under the RFQ, will enter into the Design-

Build Agreement as the Design-Builder. Can be used interchangeably with "Offeror".

L. RFQ Documents: The Advertisement or Invitation, RFQ, and any forms, Project information, budget information, proposed Contract Documents, or other documents issued with or incorporated by the RFQ.

M. Selection Committee (Committee): The group of qualified Orange Water and Sewer Authority staff, Consultant staff, and other stakeholders appointed by the Executive Director that are responsible for evaluating the Statements of Qualifications and short-listing Proposers in response to the RFQ and for evaluating and ranking Proposals in response to the Request for Proposals.

N. State: North Carolina.

O. Statement of Qualifications (SOQ): The document submitted by a Proposer in response to the RFQ, including any completed forms, attachments, and exhibits.

P. Subcontractor. Any individual, partnership, corporation, or joint venture to whom the Contractor subcontracts part of the work.

ATTACHMENT B

PROGRESSIVE DESIGN BUILD AGREEMENT

Specific Instructions

Section	***Title***	***Instruction***
General	*Purpose of This Agreement*	*DBIA Document No. 545 ("Agreement") should be used for progressive design-build water and wastewater projects. Progressive Design-Build allows an Owner to complete a Design-Build project in two phases. In Phase 1 Design-Builder completes preliminary design, sets the construction plan and establishes the Phase 2 costs to complete final design and the planned construction. This Agreement allows for Owner to pay Design-Builder for design services and construction work in Phase 2 using Cost of the Work plus a Fee, with or without a Guaranteed Maximum Price ("GMP"), or Lump Sum.* *If there is uncertainty about Owner's final design Project Criteria after Phase 1, or the final design Project Criteria remain to be developed by Owner and Design-Builder together during Phase 2, a cost-plus/GMP contracting approach is desirable.* *If there is certainty as to Owner's Project Criteria and project design after Phase 1, a lump sum fixed price for the completion of all design and construction services in Phase 2 may be suitable, especially when Owner procures Design-Builder's services by competitive means.*
General	*Purpose of These Instructions*	*These Instructions are not part of this Agreement but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.*
General	*Related Documents*	*This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.*
General	*Date*	*On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.*
General	*Parties: Owner and Design-Builder*	*On Page 1 enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company or other.*
1.3	*Contract Price Amendment and Proposal*	*When a GMP or Lump Sum is established after execution of this Agreement for Phase 2 work, the Proposal must be attached to the Contract Price Amendment pursuant to Section 1.3.2.3. Both the Contract Price Amendment and Proposal will include those Basis of Design Documents Design-Builder uses as the basis for its Contract Price.* *This Agreement provides the parties flexibility in establishing the Phase 2 Contract Price. Parties can establish a GMP or Lump Sum for Phase 2 after entering into this Agreement, or elect to proceed on the basis of costs plus a fee, without a GMP or Lump Sum.*

Section	Title	Instruction
		If a GMP or Lump Sum method is elected, the GMP or Lump Sum should not be established until the Basis of Design Documents are sufficiently defined during Phase 1 to make the GMP or Lump Sum realistic and meaningful. Setting it too early does not permit reasonable opportunity for scope definition and evaluation of Project risk. On the other hand, setting it too late may not achieve Owner's objective of having an early price guarantee to enable it to make decisions relative to the Project.
1.3	*Proposal After Execution of This Agreement*	*At the completion of Phase 1 Services, Design-Builder shall submit its Proposal, which shall include the items listed in Sections 1.3.1.1 to 1.3.1.12. If the parties agree to additions or deletions from this list, modify Section 1.3 appropriately.* *The Agreement provides the parties with flexibility as to when the Proposal will be submitted after execution of the Agreement. Prior to execution of the Agreement the parties should discuss when Owner desires Design-Builder to submit its Proposal.*
1.3.1.4	*Schedule*	*Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required, and any Owner-created constraints. The Agreement also provides flexibility to establish the Scheduled Substantial Completion Date prior to submission of the Proposal.*
1.3.2.3	*Acceptance of Proposal*	*If Owner accepts the Proposal, the parties should amend this Agreement to add the final Proposal as a Contract Document pursuant to Section 2.1.2.*
1.3.2.4	*Failure to Accept the Proposal*	*This Agreement provides three options for Owner in the event it fails to accept the Proposal and two choices for Design-Builder if Owner fails to exercise any of the three options. These options are specifically designed to prevent one party from receiving a windfall in the event the parties cannot agree on the GMP or Lump Sum and the Agreement is terminated. This Agreement also states when the Agreement terminates or the Agreement is deemed completed if Owner fails to exercise one of the options.* *The parties should take note that if Owner exercises its option to terminate for convenience, or Design-Builder suspends performance, Design-Builder will not be entitled to payment for uncompleted Work provided by Section 8.2. However, additional payment for Owner's use of Work Product will be due Design-Builder pursuant to Section 4.3, if Owner proceeds to complete the Project using Design-Builder's Work Product.*
2.1.5	*Construction Documents*	*After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents, subject to Owner's review and approval.*

Section	Title	Instruction
2.1	*Order of Precedence*	*The Contract Documents are listed in Section 2.1 in the order of their precedence. The Contract Price Amendment and Proposal are based on the Basis of Design Documents, which are comprised of various documents. The parties should strongly consider establishing the priority of the various documents comprising the Contract Price Amendment or Proposal to avoid disputes should discrepancies arise among the documents. Moreover, Section 2.1.7 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.*
3.3	*Definitions*	*Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.*
3.4	*Design Specifications*	*Owner is cautioned that consistent with legal precedent, if it includes design specifications in its Project Criteria Design-Builder is entitled to rely on the information provided and to the extent said information is not accurate, Design-Builder is entitled to an adjustment in the Contract Price and/or Contract Time. Accordingly, Owner should consider using performance specifications to avoid such potential liability.*
4.1	*Work Product*	*This Agreement provides that Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.*
4.2	*Owner's Limited License Upon Payment in Full*	*Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project. This Section also provides the parties with the option of transferring ownership of some or all of the Work Product to Owner upon payment in full for all Work performed. Generally, where Owner desires ownership of Work Product, it is sufficient to transfer ownership of unique architectural and design elements.*
4.3	*Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate*	*Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or third party forces, Design-Builder shall grant Owner the rights set forth in Section 4.2, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.*
4.3.2	*Additional Compensation*	*To minimize disputes, the parties should negotiate prior to the execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.*

Section	Title	Instruction
4.4	*Owner's Limited License upon Design-Builder's Default*	*If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, to complete the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2.*
4.5	*Owner's Indemnification for Use of Work Product*	*Owner's use or alteration of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.*
5.1	*Date of Commencement*	*Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.*
5.2.1	*Substantial Completion of the Entire Work*	*Enter the calendar days of duration by which Substantial Completion has to be achieved. The parties in this Section have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract. If this option is selected, Substantial Completion will be deemed to be achieved no later than the date a Temporary Certificate of Occupancy is issued if applicable to the Project.*
5.2.2	*Interim Milestones*	*It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. As presently drafted, no remedy is provided to Owner if an interim milestone is not met. If Owner has special requirements as it relates to interim milestones, Owner may want to consider a remedy for Design-Builder's failure to meet an interim milestone, as well as providing a bonus to Design-Builder for satisfying such interim milestone.*

Section	Title	Instruction
5.4	*Liquidated Damages*	*Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder. Moreover, in the event a GMP or Lump Sum is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing liquidated damages until such time as the GMP or Lump Sum is established.* *Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed.* *The parties are also provided the option of establishing liquidated damages if Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties must negotiate the number of days, as well as the liquidated damages amount. The parties in negotiating liquidated damages should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.* *The parties also have the option here of eliminating liquidated damages altogether, in which case Owner can recover actual damages for Project delay at an amount that is capped by the parties. Owner is cautioned that it still cannot recover consequential damages under Section 10.5.1 of the General Conditions of Contract.* *Owner is advised to seek the advice of legal counsel as liquidated damages for failing to timely attain Final Completion should constitute a reasonable estimate of the damages Owner will incur if Final Completion is not met within the specified number of days after Substantial Completion. It is foreseeable that such damages would be significantly less than any liquidated damages assessed for failing to timely attain Substantial Completion.*
5.5	*Liquidated Damages Cap*	*The parties can agree to cap liquidated damages at a negotiated amount.*
5.6	*Early Completion Bonus*	*If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. Moreover, in the event a GMP or Lump Sum is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing an early completion bonus until such time as the GMP or Lump Sum is established. The parties also have the option in Section 5.6 of capping the early completion bonus at a negotiated amount.*
5.7	*Compensation for Force Majeure Events*	*The parties are provided the opportunity of providing Design-Builder the right to receive compensation for Force Majeure Events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties must negotiate how many cumulative days of Force Majeure delays must*

Section	Title	Instruction
		occur before Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.
6.1	*GMP or Lump Sum at Agreement Execution*	*Enter the GMP or Lump Sum for Phase 2 Services, if appropriate. Attach as an amendment to this Agreement the Basis of Design Documents used to establish the GMP or Lump Sum. These documents comprise the Contract Price Amendment which shall become a Contract Document pursuant to Section 2.1.2 of the Agreement. Design-Builder does not guarantee any specific line item provided as part of a GMP.* *By selecting the alternate option if using a GMP, Design-Builder agrees to guarantee the line item in its GMP for general conditions costs only. Design-Builder agrees that it is responsible for paying general conditions costs in excess of this line item. Design-Builder does not guarantee any other line items in the GMP.*
6.1.3	*Optional Pricing*	*This Agreement allows the parties the flexibility to establish within the Contract Price a different payment basis for certain portions of the Work which may be necessary to permit Design-Builder to furnish Owner with a GMP or Lump Sum.*
6.4.1	*Design-Builder's Fee*	*Enter the amount of Design-Builder's Fee as a sum certain or as a percentage of the Cost of the Work. Design-Builder's Fee shall be commensurate with the services it provides and the risk it assumes in providing single point responsibility to Owner.*
6.4.2	*Adjustments to Design-Builder's Fee*	*For additive Change Orders, the parties must negotiate the Fee Design-Builder will receive. For deductive Change Orders, the parties have the option by checking the appropriate box of whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.*
6.5.1.3	*Wages for Design-Builder's Employees at Principal or Branch Offices*	*DBIA endorses reimbursing salaries and associated benefits of Design-Builder's Project personnel, such as accountants, stationed at offices other than the field office, when to do so is more efficient and cost effective. Enter the percentage markup to be applied for Project-related overhead associated with such personnel. Insert, or attach as an exhibit, a list of such personnel and their job functions.*
6.5.1.4	*Employee Benefits*	*It may be simpler for the parties to agree on a multiplier (rather than actual costs) to compensate Design-Builder for employee benefits. Accordingly, the parties may want to insert the multiplier to be applied to the wages and salaries of its reimbursable employees.*
6.5.1.7	*Costs for Defective/Non-Conforming Work*	*The Cost of the Work shall include the costs to repair or correct defective or non-conforming Work (including warranty or corrective work performed after Substantial Completion) unless caused by Design-Builder's negligence. DBIA believes that Design-Builder should not be penalized for inadvertent mistakes which are inevitable when designing and constructing a Project. To do so would encourage ultra-conservatism in every task, the ultimate cost of which would be greater than a proactive approach to performing the Work, which includes ordinary mistakes or inadvertence.*

Section	Title	Instruction
6.5.1.23	*Warranty Escrow*	*At this section, the parties are provided the opportunity to establish prior to Final Completion an escrow account in a negotiated amount to be used to reimburse Design-Builder for its costs incurred in performing warranty Work if a GMP is used. If funds remain in the escrow account after the expiration of the warranty period, the funds are returned to Owner subject to Design-Builder's share of any savings. Note that even if the escrow account is exhausted, if funds remain under the GMP, Owner is still obligated to reimburse Design-Builder for its warranty Work.*
6.6.2	*GMP Contingency*	*Enter the amount of Design-Builder's Contingency if using a GMP. The Contingency is for the exclusive use of Design-Builder and covers all unanticipated costs incurred that are not the basis of a Change Order. This section sets forth by way of example only the type of costs that would be funded out of the Contingency. Other costs such as, but not limited to, any deductibles Design-Builder is obligated to pay would be subject to reimbursement. Design-Builder is also required to provide Owner with a monthly status report accounting for the Contingency, including all reasonably foreseen uses and potential uses, of the Contingency for the upcoming three months.* *While not provided for in the Contingency provision, DBIA recognizes that there may be situations where Owner will want to recapture the Contingency prior to Final Completion. For example, Owner may want to use amounts in the Contingency to fund changes to the Project. Owner's desire must be balanced against Design-Builder's need to use the Contingency to fund unanticipated costs for which it is liable. An option to consider to accommodate both interests is to establish an "Owner's Contingency" and a "Design-Builder's Contingency" in the GMP. If this option is used, any savings clause in the agreement should be drafted appropriately to address these pools of funds.*
6.6.3	*Savings*	*One of the benefits of a GMP approach is the possibility that with good management by Design-Builder and timely support from Owner the actual Cost of the Work and Fee may be less than the GMP. This creates a savings pool that should result in a benefit to both Design-Builder and Owner. Sharing these savings creates an incentive for Design-Builder to save costs. Some factors to consider in determining how the Savings are shared include the timing for the establishment of the GMP and the amount of Design-Builder's Fee established under Section 6.4.1.*
6.6.3.1	*Savings Calculations*	*This section provides that if the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted, the savings, if any, shall be shared. The Agreement offers two choices for distributing Savings. Choose a method and enter the appropriate figures.*
6.7.4	*Allowance Value*	*This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance values. The Allowance Value for which Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs, and Fee are deemed to be included in the Contract Price. However, by checking the box, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.4.2.*

Section	Title	Instruction
6.8	*Performance Incentives*	*In addition, for the potential of Design-Builder to share in Savings as set forth in Section 6.6.3, there may be other performance incentives that will influence Project success. Such incentives may include award fees tied to Design-Builder achieving certain standards relative to client satisfaction, safety and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. Any agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.*
7.2.1	*Progress Payments*	*Enter the day of the month when Design-Builder shall submit its Application for Payment.*
7.3.1	*Retainage*	*Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.* *The parties are provided the option of modifying the retainage provision by checking the box. This option excludes from retainage Design-Builder's General Conditions costs and amounts paid to Design-Builder's Design Consultant. The rationale for selecting this option is that Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-bid-build delivery method, Owner typically does not retain sums from its Designer.*
7.3.2	*Release of Retainage*	*This section requires Owner to release retainage to Design-Builder. If Design-Builder and Owner have established a warranty reserve in accordance with Section 6.5.1.23, the parties shall establish an escrow account at this time.*
7.5	*Interest*	*The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants, and Subcontractors.*
7.6	*Record Keeping*	*Owner is provided access to Design-Builder's accounting information as it relates to Costs of the Work. However, if the parties have agreed to multipliers or markups, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.*
8.1	*Termination for Convenience: Overhead and Profit*	*The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.*

Section	Title	Instruction
8.2	*Termination for Convenience: Additional Payments*	*Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price or, if a GMP or Lump Sum has not been established, the remaining balance of the most recent estimated Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.*
Article 9	*Representatives of the Parties*	*Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively.* *Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively.* *The parties can elect to establish these Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.*
10.1	*Insurance*	*Attach an Insurance Exhibit setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor.*
10.2	*Bonds*	*Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.*
11.1	*Other Provisions*	*Insert any other provisions. For example, the parties may elect to have disputes resolved through litigation rather than arbitration, in which case the following optional language in this Section should be included.*
11.2	*Listing of Exhibits*	*Include a listing of exhibits and documents incorporated or referenced in the Agreement. This listing includes the exhibits and documents referenced in the Agreement. Additional documents or exhibits referenced in the Agreement should be listed here.*
12	*Limitation of Liability*	*This provision establishes a limit of liability of Design-Builder's liability for the Project.*

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacements
DATE: March 17, 2025

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

OWNER:
(Name and address)

Orange Water And Sewer Authority (OWASA)
400 Jones Ferry Road
Carrboro, North Carolina 27510

DESIGN-BUILDER:
(Name and address)

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

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

ARTICLE 1 - DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

1.1 General Services.

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

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

1.2 Phased Services.

1.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 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 for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

1.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 1.3.

1.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

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

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

i Design-Builder's Fee as defined in Section 6.4.1 hereof;

ii The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.2 hereof; and

iii If applicable, any prices established under Section 6.1.3 hereof;

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

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

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

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

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

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

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 If applicable, Performance Incentives;

1.3.1.11 The time limit for acceptance of the Proposal; and

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

1.3.2 Review and Adjustment to Proposal.

1.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

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

1.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner

and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.3 above;

ii Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or

iii Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 1.3.2.4 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.2.4 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 1.3.2.4(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement, and any written amendment that is executed by Design-Builder and authorized and executed by Owner issued in accordance ~~with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract")~~ with applicable law;

2.1.2 The Contract Price Amendment referenced in Section 1.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 1.3 herein;

2.1.3 -This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

2.1.4 The General Conditions of Contract;

2.1.5 Construction Documents prepared and approved in accordance with Section 1.4 of the General Conditions of Contract;

2.1.6 Exhibit B, Scope of Services; and

2.1.7 The following other documents, if any:

ARTICLE 3 - INTERPRETATION AND INTENT

3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. (Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)

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

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any 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.

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

ARTICLE 4 - OWNERSHIP OF WORK PRODUCT

~~4.1~~ Work Product. All drawings, specifications 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") shall become the property of Owner upon payment for same. All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs and reports prepared or provided by Design-Builder in connection with this Agreement become the property of the Owner, whether the projects are completed or not, and shall be delivered by Design-Builder to the Owner within ten (10) days after receipt of written notice and upon payment for same. Design-Builder may not use or permit others to use any intellectual property rights of OWASA without OWASA's prior express consent. ~~are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.~~

~~4.2~~4.1 ~~Owner's Limited License upon Project Completion and Payment in Full to Design-Builder.~~ Owner's Use of Work Product. Owner may use or transfer to others for use in OWASA's services work products developed by Design-Builder in the course of its services for the Project, provided Design-Builder is credited with work in the development of that product. Design-Builder shall have no responsibility or liability for third party use authorized by OWASA. ~~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~~ Alteration of the Work Product without the involvement of Design-Builder ~~is~~shall be at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier. ~~(collectively the "Indemnified Parties"), and on Owner's obligation to provide the indemnity set forth in Section 4.5 herein.~~

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

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

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

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

~~4.5 Owner's Indemnification for Use of Work Product. 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, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.~~

ARTICLE 5 - CONTRACT TIME

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

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than (_ —TBD____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1.]

☐ The parties agree that the definition for Substantial Completion set forth in Section 1.2.19 of the General Conditions of Contract is hereby modified to read as follows:

"*Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official, if a Temporary Certificate of Occupancy is applicable to the Project."

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

5.2.3 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 Section 1.2.8 of the General Conditions of Contract.

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

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by ( ) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Dollars ($) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. *[If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.]*

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

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

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

☐ ~~Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5.~~ Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth

herein are not achieved. Owner shall be able to recover damages from Design-Builder to the extent it can demonstrate that said actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing in no event shall Design-Builder's liability for actual damages for delays exceed _____ Dollars ($_____).

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.
[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]

☐ Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be _____Dollars ($____).

5.6 Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.4 hereof an early completion bonus of _ _____ Dollars ($ _____) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly.)*

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

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

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

☐ In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall be entitled to an increase in the Contract Price providing that: (i) said events must exceed _____ cumulative days before Design-Builder is entitled to additional compensation; and (ii) said additional compensation shall be limited to:

[Check one box only.]

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

or

☐ the direct costs and expenses Design-Builder can demonstrate it has reasonably actually incurred as a result of such event.

5.7 Owner's Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.7.1 Owner shall have a minimum of _____ days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.7.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within ____ days of receipt by Owner.

ARTICLE 6 - CONTRACT PRICE

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars ($_____) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 6.2 hereof or in the Contract Price Amendment, or equal to Design-Builder's Fee (as defined in Section 6.4 hereof) plus the Cost of the Work (as defined in Section 6.5 hereof), subject to any GMP established in Section 6.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

6.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *[This is an optional section intended to provide the parties with flexibility to identify and price limited services.]*

6.2 ~~Lump Sum. 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. The general conditions lump sum price shall be calculated based on the submitted general conditions percentage of cost of work as submitted on the RFP Attachment C – Fee and Rate Proposal Form. The submitted general conditions percentage is _____ percent.~~Reserved.

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

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

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

[Check one box only.]

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

or

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

6.4 Design-Builder's Fee.

6.4.1 Design-Builder's Fee shall be:

[Choose one of the following:]

☐ _____Dollars ($ _____), as adjusted in accordance with Section 6.4.2 below.

or

☐ _____ percent (_____%) of the Cost of the Work, as adjusted in accordance with Section 6.4.2 below.

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

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

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

[Check one box only.]

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

or

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

6.5 Cost of the Work.

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

6.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the

basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit ___ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a _____ _____ percent (_____%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

[In lieu of the language in Section 6.5.1.4 above, Design-Builder and Owner may want to include the following language:]

☐ ~~A multiplier of _____ _____ ___ percent (_____ %) shall be applied to the wages and salaries of the employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.~~

6.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.5.1.8 Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

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

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

6.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

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

6.5.1.14 All fuel and utility costs incurred in the performance of the Work.

6.5.1.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.5.1.16 ~~Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.~~Reserved.

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

6.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

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

6.5.1.20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.5.1.21 Accounting and data processing costs related to the Work.

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

~~[Design-Builder and Owner may want to consider adding the following Section 6.5.1.23 to address the payment of warranty work:]~~

~~☐ Owner and Design-Builder agree that an escrow account in the amount of _____ _____ Dollars ($_____) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP,~~

~~Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.~~

6.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

6.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.1.1, 6.5.1.2 and 6.5.1.3 hereof.

6.5.2.2 Overhead and general expenses, except as provided for in Section 6.5.1 hereof, or which may be recoverable for changes to the Work.

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

6.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

[The parties shall comply with the following Section 6.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 6.5 shall be deemed inapplicable and compensation to Design-Builder shall be based on those fees and costs identified in the balance of this Article 6.]

6.6 The Guaranteed Maximum Price.

~~6.6.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars ($_____). Documents used as a basis for the GMP 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 GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 1.3 above, to ensure that the basis for the GMP is well understood.)*~~

[In lieu of Section 6.6.1, Owner and Design-Builder may want to include the following language.]

~~6.6.2~~6.6.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars ($_____). Documents used as basis for the GMP shall be identified as the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of _____ Dollars ($_____), 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 GMP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth in Section 6.3 herein.

~~6.6.3~~6.6.2 The GMP includes a Contingency in the amount of _____ Dollars ($_____) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out

differentials; (b) overtime or acceleration; (c) 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. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

~~6.6.4~~6.6.3 Savings.

~~6.6.4.1~~6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.3 hereof) 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:

[Choose one of the following:]

☐ _____ percent (50 %) to Design-Builder and _____ percent (50 %) to Owner.

or

~~☐ The first _____ Dollars ($ _____) of Savings shall be provided to (choose either Design-Builder or Owner) _____, with the balance of Savings, if any, shared _____ percent (_____%) to Design-Builder and _____ percent (_____%) to Owner.~~

~~6.6.4.2~~6.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 7.4 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.

6.7 Allowance Items and Allowance Values.

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

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

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

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

~~*[Alternatively, the parties may want to delete Section 6.7.4 and add the following provision.]*~~

~~☐ In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item is _____ percent (_____%) greater than or less than the Allowance Value, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be determined in accordance with Section 6.4.~~

6.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.8 ~~Performance Incentives.~~Reserved.

~~6.8.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.~~

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

ARTICLE 7 - PROCEDURE FOR PAYMENT

7.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *[Insert terms.]*

7.2 Contract Price Progress Payments.

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

7.2.2 Owner shall make payment within ten (3~~1~~0) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by

Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Progress Payments.

7.3.1 Owner will retain percent (5 %) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

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

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

7.3.2 Within ~~fifteen~~ forty-five (~~14~~5) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

[For public projects, Design-Builder and Owner may want to consider substituting the following retainage provision.]

☐ Owner will retain _____ percent (_____ %) from Design-Builder's Applications for Payment pursuant to applicable state law.

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

Because Owner has obtained a performance bond and payment bond pursuant to Article 9 below, Owner will not retain retainage from Design-Builder on this Project.

[If Owner and Design-Builder have established a warranty reserve pursuant to Section 6.5.1.23 above, the following provision should be included.]

☐ If a warranty reserve has been established pursuant to Section 6.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 6.5.1.23 above.

7.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. 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 ten (10) days after Owner's receipt of the Final

Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

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

7.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. 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 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 Owner and Design-Builder as part of this Agreement is not subject to audit.

ARTICLE 8 - TERMINATION FOR CONVENIENCE

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, and the parties have agreed to a payment to Design-Builder in the case of such termination of convenience, Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

[Choose one of the following:]

☐ The fair and reasonable sums for overhead and profit on the sum of items set forth in Section 11.6.1 of the General Conditions.

or

☐ Overhead and profit in the amount of _____ percent (_____ _____%) on the sum of items set forth in Section 11.6.1 of the General Conditions.

8.2 In addition to the amounts set forth in Section 8.1 above and Section 11.6.1 of the General Conditions, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

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

ARTICLE 9 - REPRESENTATIVES OF THE PARTIES

9.1 Owner's Representatives.

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

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

9.2 Design-Builder's Representatives.

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

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

ARTICLE 10 - BONDS AND INSURANCE

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

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

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

☐ Required ☐ Not Required

Payment Bond.

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

☐ Required ☐ Not Required

Other Performance Security.

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

☐ Required ☐ Not Required

ARTICLE 11 - OTHER PROVISIONS

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

11.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria
Exhibit B – Scope of Services
Exhibit C – General Conditions
Exhibit D – Funding and MWBE Requirements
Exhibit E – Insurance Requirements
Exhibit F – Form of Contract Price Amendment
Exhibit G – Form of Payment and Performance Bonds
Exhibit H – Form of Waiver of Liens and Bond Claims
Exhibit I – Form of Consent of Surety to Final Payment
Exhibit J – Form of Affirmation of Compliance
Exhibit K – Additional Forms
~~DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")~~
~~Contract Price Amendment, if any.~~

[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative disputes proceeding clause.]

Any claims, disputes or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in accordance with the provisions of Section 13.4 of the General Conditions. ~~a court of competent jurisdiction in the state in which the Project is located.~~

[Section 2.9.1 of the General Conditions contains an option for the parties to establish a limited time frame for Design-Builder's warranty. If the parties agree to such a limited time frame, the parties may insert it below.]

☐ The parties have agreed to limit the time frame that Owner can make a claim pursuant to Section 2.9.1 of the General Conditions. Owner must make all claims pursuant to Section 2.9.1 of the General Conditions within _____one (1)_____ year~~s~~ of the date of Final Completion of the Project.

~~Article 12 - LIMITATION of Liability~~

~~12.1 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 _____percent (___%) of the Contract Price. The parties agree that specific consideration has been given by 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.

OWNER:	**DESIGN-BUILDER:**
_____	_____
(Name of Owner)	*(Name of Design-Builder)*
_____	_____
(Signature)	*(Signature)*
_____	_____
(Printed Name)	*(Printed Name)*
_____	_____
(Title)	*(Title)*
Date: _____	Date: _____

ATTACHMENT B

EXHIBIT A – PROJECT CRITERIA

1. Project Description

Multiple failures have occurred on aerial crossings along the Morgan Creek Interceptor in the last several years. In 2023 a condition assessment of these aerial crossings was completed. Seven (7) crossings were reported as critical for immediate action to avoid future failures and sanitary sewer overflows within Morgan Creek. Defects identified in the report include but are not limited to manholes partially or nearly exposed in the creek bank, significantly deteriorated pipe walls, and exposed pier bases.

It is expected that stakeholder coordination (as part of the Morgan Creek Interceptor is within property managed by the North Carolina Botanical Gardens, Town of Chapel Hill, Town of Carrboro, the University of North Carolina Chapel Hill, etc.) and contract site access and laydown will be some of the most challenging aspects of the project.

2. Project Goals

The Owner has defined specific project goals below for the consideration of the Design-Build Team (DB Team):

1. Rehabilitate or replace seven (7) critical aerial crossings with consideration of lifecycle cost analysis of the proposed solution for rehabilitating or replacing
2. Be a good neighbor during the construction phase
3. Protect the environment during the construction phase and maintain aesthetics and restoration
4. Improve durability of pipe material
5. Provide improved maintenance and accessibility
6. Proper pipe sizing for future 2045 flow modeling

3. Project Schedule

Significant project milestones are anticipated as follows:

Year	Month	Milestone
2025	April	Submittal of Design-Build Team Qualifications
2025	May	Selection of Design-Build Team
2025	May/June	Award of PDB Contract & NTP for Phase 1 Services
2025	September	30% Design Complete w/ Initial Cost Opinion
2025	December	60% Design Complete
2026	January	Submittal of Guaranteed Maximum Price

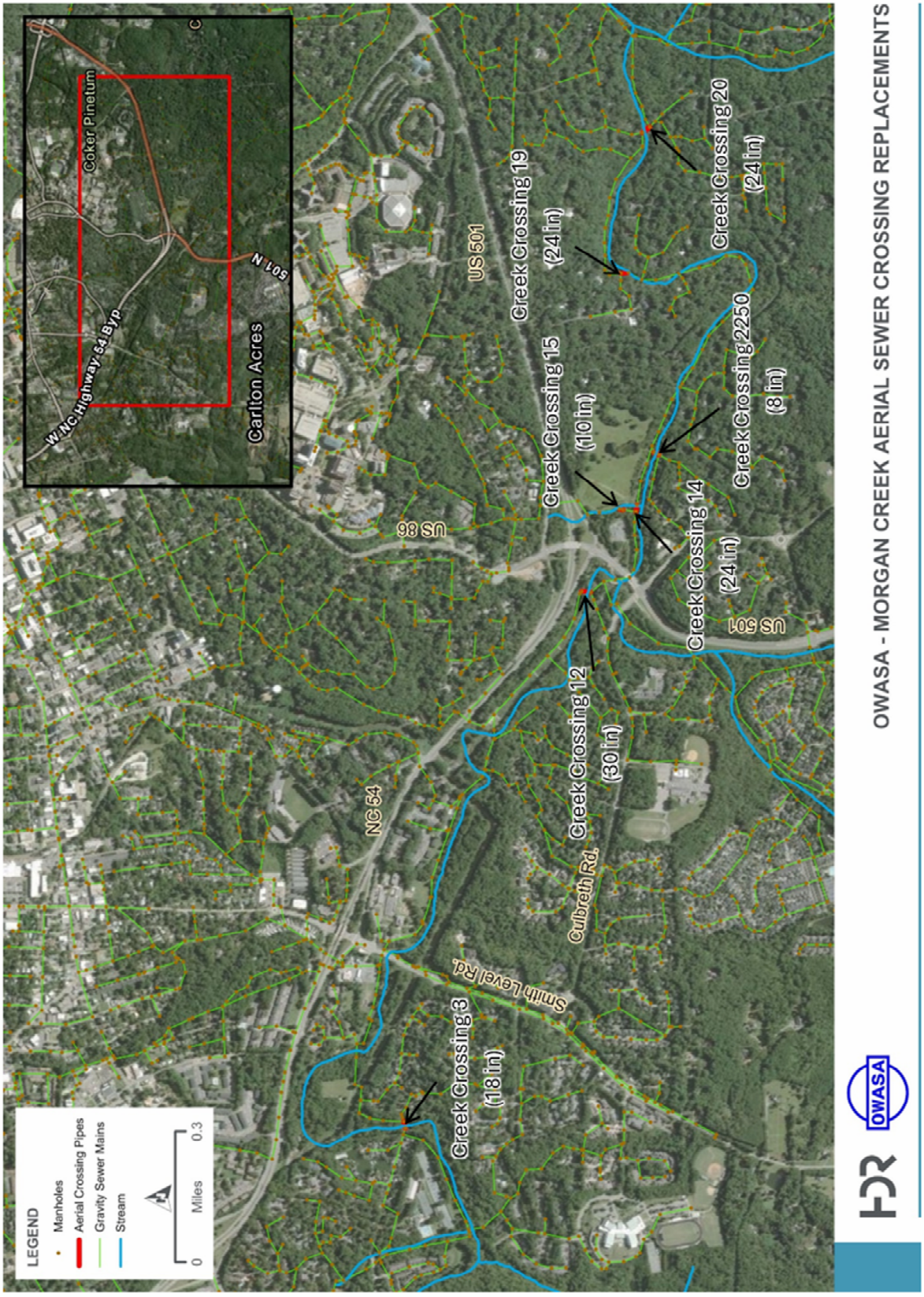
Year	Month	Milestone
2026	February	Latest Start of Phase 2 Services
2027	February	Substantial Completion

4. Owner Project Management

   The Owner has identified Mohisin Rasheed with OWASA as the owner project manager and Darren Berger as project specialist. The Owner has also teamed with HDR as the Owner's Advisor (OA) for this project.

5. Site Information

   See provided overall locations and individual site information, below.


OWASA - MORGAN CREEK AERIAL SEWER CROSSING REPLACEMENTS
Coker Pinetum
W.N.C. Highway 54 Byp
Carlton Acres
N 501
US 501
Creek Crossing 19
(24 in)
Creek Crossing 20
(24 in)
Creek Crossing 15
(10 in)
Creek Crossing 2250
(8 in)
US 86
Creek Crossing 14
(24 in)
US 501
Creek Crossing 12
(30 in)
NC 54
Culbreth Rd.
Smith Level Rd.
Creek Crossing 3
(18 in)
LEGEND
Manholes
Aerial Crossing Pipes
Gravity Sewer Mains
Stream
0
0.3
Miles
OWASA
HDR

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

OWASA CREEK CROSSING – 3 (M&C Report Site 4)

OWASA GIS INFORMATION:

PIPE DIAMETER: 18-INCH
U/S & D/S MH ID # - 7021 to 7020

WORK REQUIRED & CONSIDERATIONS:

- Replace entire pipe segment and manholes.
- Consider relocating MH#7021 further away from the bank.
- Eliminate pipe support piers located in stream and streambanks
- Evaluate new crossing alignment in existing easement
- Evaluate increasing pipe diameter of the crossing.

CREEK CROSSING PICTURE:



CREEK CROSSING LOCATION: (OWASA GIS)



CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

OWASA CREEK CROSSING –12 (M&C Report Site 12)

OWASA GIS INFORMATION:

PIPE DIAMETER: 30-INCH
U/S & D/S MH ID # - 13078 to 13076

WORK REQUIRED & CONSIDERATIONS:

- Replace entire pipe segment and manholes.
- Eliminate pipe support piers located in stream and streambanks
- Evaluate new crossing alignment in existing easement

CREEK CROSSING PICTURE:



CREEK CROSSING LOCATION: (OWASA GIS)



CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

OWASA CREEK CROSSING –14 (M&C Report Site 13)

OWASA GIS INFORMATION:

PIPE DIAMETER: 24-INCH
U/S & D/S MH ID # - 7656 to 7658

WORK REQUIRED & CONSIDERATIONS:

- Replace entire pipe segment and manholes.
- Eliminate pipe support piers located in stream and streambanks

CREEK CROSSING PICTURE:



CREEK CROSSING LOCATION: (OWASA GIS)



OWASA CREEK CROSSING –15 (M&C Report Site 18)

OWASA GIS INFORMATION:

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

PIPE DIAMETER: 10-INCH
U/S & D/S MH ID # - 7618 to 7624

WORK REQUIRED & CONSIDERATIONS:

- Replace entire pipe segment and manholes.
- Eliminate pipe support piers located in stream and streambanks

CREEK CROSSING PICTURE:



CREEK CROSSING LOCATION: (OWASA GIS)



OWASA CREEK CROSSING –2250 (M&C Report Site 6)

OWASA GIS INFORMATION:

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

PIPE DIAMETER: 8-INCH
U/S & D/S MH ID # - 7706 to 7697

WORK REQUIRED & CONSIDERATIONS:

- Replace entire pipe segment and manholes.
- Eliminate pipe support piers located in stream and streambanks
- Evaluate moving manholes away from streambank

CREEK CROSSING PICTURE:



CREEK CROSSING LOCATION: (OWASA GIS)



CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

OWASA CREEK CROSSING –19 (M&C Report Site 11)

OWASA GIS INFORMATION:

PIPE DIAMETER: 24-INCH
U/S & D/S MH ID # - 7631 to 10371

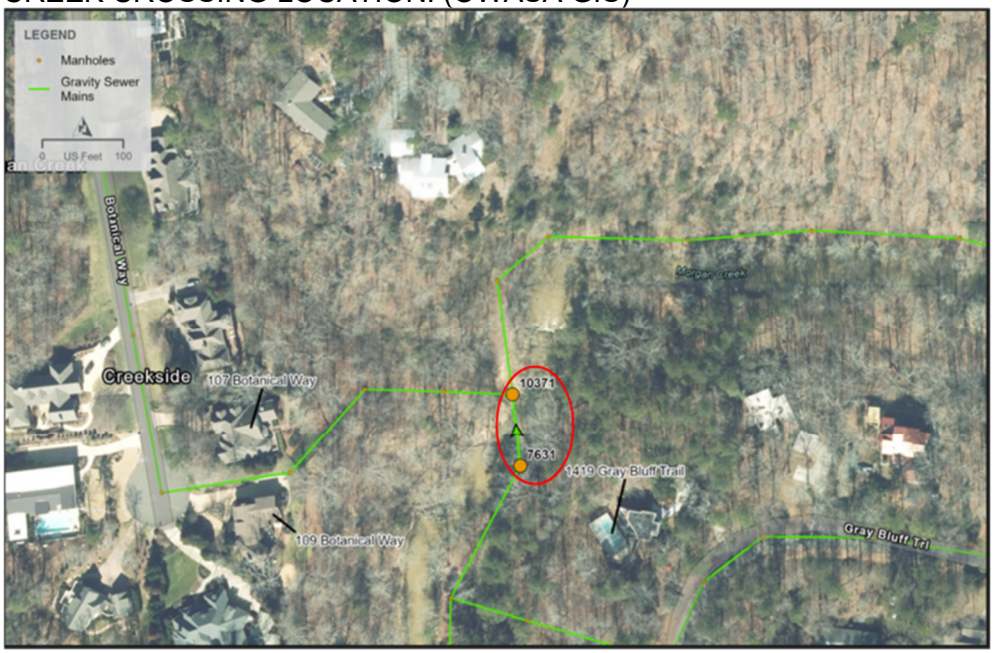
WORK REQUIRED & CONSIDERATIONS:

- Replace entire pipe segment and manholes.
- Eliminate pipe support piers located in stream and stream banks
- Evaluate moving manholes away from streambank
- Evaluate increasing the pipe diameter

CREEK CROSSING PICTURE:



CREEK CROSSING LOCATION: (OWASA GIS)



CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

OWASA CREEK CROSSING – 20 (M&C Report Site 7)

OWASA GIS INFORMATION:

PIPE DIAMETER: 24-INCH
U/S & D/S MH ID # - 7670 to 7689

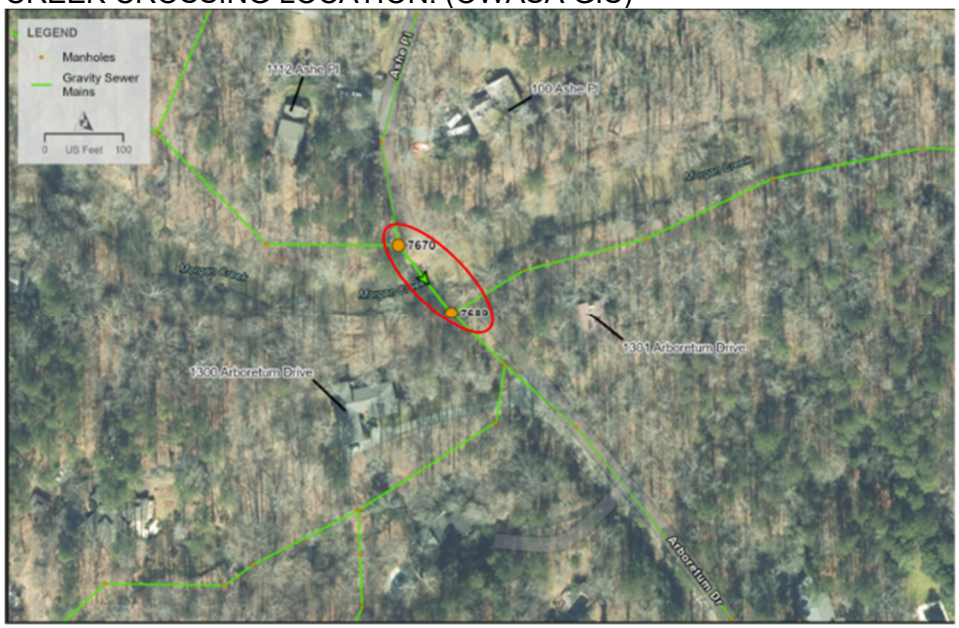
WORK REQUIRED & CONSIDERATIONS:

- Replace entire pipe segment and manholes.
- Eliminate pipe support piers located in stream and streambanks
- Evaluate increasing the pipe diameter

CREEK CROSSING PICTURE:



CREEK CROSSING LOCATION: (OWASA GIS)



ATTACHMENT B

EXHIBIT B – SCOPE

After being selected, the Design-Builder will execute a contract with the Owner to provide design and construction services for the project, including but not limited to:

1 Phase 1 – Preconstruction

1.1 Project Management

Provide all project management, documentation, and progress reporting as required for a successful project. All project documents shall be saved and stored on a cloud-based program and accessible by the Owner and Owner's Advisor.

1.2 Quality Control Plan

Provide quality control plan for Phase 1 activities. Specific quality control and quality assurance measures for Phase 2 will be further defined during scoping of that Phase.

1.3 Preliminary Project Schedule

The DB Team will provide a preliminary project schedule showing significant project milestone start dates, durations, and completion dates with consideration of time (20 working days) for OWASA review and approval that meets or exceeds the owner project schedule detailed in EXHIBIT A – Pat 3. This schedule will be provided at the onset of design. The schedule will be discussed and updated during the established progress meetings.

1.4 Design Stage Requirements

The DB Team will lead interactive design workshops with OWASA. The DB Team will incorporate two stages of design in Phase 1 services. Those are detailed as 30% Stage and 60% Stage below.

The 30% stage will come after the initial cost opinion provided by the DB Team and will show general alignment of the pipe and give general details of whether the pipe will be rehabilitated or replaced. This stage will also include preliminary design efforts with design drawings and specification submittals, including, but not limited to updates to site plans (including indications of bypass pumping specifics) and provide a constructability plan showing the logic of how the crossings will be scheduled to be worked. This stage will also include an update cost estimate and provide at least two weeks to OWASA and the OA for review.

The 60% stage will provide sufficient details in the design and specification of the

project to allow OWASA to make an informed decision about whether the project is ready to proceed to construction. This stage will also require an updated cost opinion to sufficiently support a Phase 2 Guaranteed Maximum Price proposal.

1.5 Special Design Evaluations

For each site location, the DB Team will need to incorporate the 2045 projected flow modeling scenario to check that the aerial crossing is sized appropriately. Should the modeled flow indicate a need to upsize the internal diameter of the crossing, OWASA is willing to consider alternative rehabilitation methods to address the immediate concerns with the crossing and postpone the replacement of the crossing until such time that the trunk main can also be resized.

1.6 Preliminary Site Plan(s)

The DB Team will submit preliminary site plans showing the proposed access to the specific crossing sites, identified material laydown areas, designated work zones, and any other necessary considerations for management of each crossing site during construction. These plans will also include specifics for by-pass pumping to ensure the gravity system continues to flow during rehabilitation or replacement. These plans will need to be updated and reviewed prior to the 30% and 60% design submittal stages.

1.7 Site-Specific Safety Plan

In consideration of the information gathering stage of design development, the DB Team will submit a site-specific safety plan for all proposed work to gather field information to support their proposed design. Example activities include but are not limited to surveying, geotechnical, and subsurface utility exploration.

1.8 Surveying/Permitting/Encroachments/Easements

The DB Team will complete all survey, environmental delineations, and geotechnical engineering required to complete design, construction, and cost estimating.

The DB Team will also obtain all permits, encroachments and easements required for construction. The DB Team will be responsible for paying all permitting fees required to secure permits. The DB Team shall provide a list of documents necessary for obtaining all permits required for project construction. The DB Team will be responsible for preparing these documents and for obtaining all the required permits. The DB Team shall expect to complete all tasks and facilitate agency coordination in order to obtain the permits. The DB Team’s project schedule shall account for time to apply for and receive the permits.

All permits, encroachments, and easements will be properly executed by the

respective authority having jurisdiction.

The DB Team will also be responsible for providing all certifications required to close out all permit obtained through the project.

1.9 Cost Estimate

The DB Team will create an initial cost estimate which will be maintained throughout Phase 1 services and updated in the 30% and 60% design stages. Each cost estimate will be formatted and broken down by an established and agreed-upon work breakdown structure to show the significant details of work for this project. The cost estimate format shall be approved by OWASA.

1.10 Guaranteed Maximum Price Format

At appropriate milestones within Phase 1 Services, the DB Team shall submit proposals to OWASA (the "GMP Proposal") for the completion of the design and construction of the project to establish (or amend) the Contract Price, which shall be based on the DB's Fee and Cost of the Work subject to a GMP. The GMP format shall be "open-book" and approved by OWASA before submission and shall be consistent with the following format:

- **Cover Letter**
  - Signed by Project Director and/or Officer of Design-Builder.
  - Time Limit of Acceptance of the Proposal
- **Section 1 - Guaranteed Maximum Price (GMP)**
  - GMP Cost Summary
    - See Attached
  - GMP Backup Information
    - General Conditions Cost Details
      - Provide detailed cost breakdown for labor type, material type, equipment type, subcontracts, and other costs as appropriate. Clearly identify self-performed work versus subcontracted work.
    - Breakdown by Work Area Cost Details
      - For each Work Area provide detailed cost breakdown for labor type, material type, yellow iron equipment type, process equipment type, subcontracts, and other costs as appropriate. Clearly identify self-performed work versus subcontracted work.
    - Allowance Item List and Cost Details
      - For each Allowance Item provide detailed cost breakdown for labor type, material type, yellow iron equipment type, process equipment type, subcontracts, and other costs as

appropriate. Clearly identify self -performed work versus subcontracted work.

- Contingency Justification Details by Work Area
  - For each work area clearly justify contingency being carried
- Proposed changes to the General Conditions DBIA Document (if applicable)
- Subcontractor Bid Tab Summary and Bids
- Vendor/Equipment Bid Tab Summary and Bids
- Updated Team Organizational Chart
- Final Engineering Design and Engineering Services during Construction Scope and Fee Proposals
- Schedule of Alternate Prices (if applicable)
- Schedule of Unit Prices
- Statement of Additional Services (if applicable)
- Permit List

- **Section 2 - Contract Documents as Basis for GMP**
  - 75% Plans (or acceptable % complete level of Plans)
  - Specifications Manual
  - Geotechnical and SUE Data
- **Section 3 – Assumptions, Clarifications, and Exclusions**
- **Section 4 – Project Schedule**
  - Project Schedule with Substantial Completion Date
    - Identify major milestones, shutdowns and critical path
    - Provide monthly updates along with detailed report on schedule activity changes

- **GMP Cost Summary Format**

Description		*Amount:*	
Direct Costs			
	Labor	$	-
	Material	$	-
	Subcontracts	$	-
	Equipment	$	-
	Other	$	-
	Subtotal	**$**	**-**
Engineering Services			
	Design to 100%	$	-
	ESDC	$	-
	Subtotal	**$**	**-**
Indirect Costs			
	Sub/Vendor Bonds	$	-
	Permits	$	-
	Taxes	$	-
	Freight	$	-
	Subtotal	**$**	**-**
DB's Fees			
	DB's Fee (7.4.1)	$	-
	Subtotal	**$**	**-**
DB's General Conditions			
	DB's General Conditions (DBIA 535 Revised)	$	-
	Subtotal	**$**	**-**
Bonds & Insurance			
	Bonds	$	-
	Insurance	$	-
	Subtotal	**$**	**-**
Allowances			
	Allowance 1	$	-
	Allowance 2	$	-
	Allowance 3	$	-
	…	$	-
	Subtotal	**$**	**-**
	Total GMP	**$**	**-**

1.11 Planning/Review Requirements

All designs must be reviewed and approved by the appropriate authorities having jurisdiction (AHJ) at the appropriate stage and time. The DB Team will be responsible for identifying those AHJs and incorporating this timing into their project plan. Specifically, bypass pumping plans for each location will need to be reviewed by OWASA.

1.12 Material Performance Requirements

The materials selected for this project must incorporate hydrogen sulfide (H2S) inert materials for the various parts and pieces of the pipelines, fittings, manholes, and other appurtenances that will be exposed to those conditions. The materials considered for design must also meet a minimum 50-year service life, under normal operating conditions.

2 Phase 2 – Construction

2.1 Overall Project Schedule

The DB Team will be responsible for creating a detailed project schedule that aligns with the delivery of this project during construction. The level of detail provided in the schedule will allow OWASA to clearly identify what work was completed between progress meetings as well as see what work is forecasted before the subsequent progress meeting.

2.2 Site Safety Plan

The DB Team will be responsible for developing and implementing a site-specific safety plan. This will be necessary to address each individual site and will encompass all potential workers and visitors to the sites.

2.3 Emergency Action/Response Plan

The DB Team will prepare, share, and implement their emergency action plans. The DB Team shall incorporate OWASA's Destructive Weather Policy into their plan.

2.4 Final Design

During Phase 2, the DB Team will submit a 100% final design including drawings and specifications to support all work completed under this project.

2.5 Traffic Control

All necessary traffic control and coordination to support project construction will be the responsibility of the DB Team.

2.6 Construction Administration

The DB Team will provide sufficient construction administration resources as is typical on Design Build delivery projects.

Where appropriate, the DB Team will provide sufficient materials testing, special inspection, and/or observation services to ensure that the materials are installed per the intended design and so that they meet the manufacturer's requirements for installation and warranty. Third-party services for construction materials testing,

special inspection and/or observation (outside of those managed/coordinated by the DB Team) may be managed by OWASA.

Testing services meeting the requirements of the respective testing standards and/or manufacturer requirements will be provided by the DB Team prior to project startup.

At the conclusion of project construction, all applicable project startup and close-out services that are detailed by OWASA will be provided by the DB Team.

2.7 Record Drawings

Record drawings will be provided at the conclusion of the project by the DB Team, to OWASA. The record drawings should be in both (.pdf) and (.dwg) file types.

2.8 Warranties

All materials, equipment and workmanship shall have the standard 1-year installation warranty. The DB Team shall provide a list of recommended steps to be taken to be eligible for the warranty period.

Product warranties provided by the manufacturer will also be signed over to OWASA at the conclusion of the project. Warranties for product will not start before the acceptance and use of those materials. The DB Team will provide a list of each product warranty and the date the warranty will expire.

2.9 Final Site Establishment

Where appropriate, prior to reseeding efforts, the DB Team shall regrade the disturbed areas to provide passage and a mowable surface.

Reseeding of disturbed areas shall meet the requirements set forth by the permits and easement conditions secured for the project. At a minimum, NCDOT approved seed mixtures shall be used within the public right-of-way and all other disturbed areas along the project. Certain areas along the greenway path will require specific seed mixtures if disturbed.

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

ATTACHMENT B

EXHIBIT C – GENERAL CONDITIONS

[This exhibit utilized DBIA Form 535, Third Edition 2022 as the basis. Recommend depicting any Owner modifications to the DBIA General Conditions in tracked changes mode in the RFQ. Specific instructions from the DBIA document are included below and describe the purpose and intent of each Article]

Specific Instructions

Section	***Title***	***Instruction***
General	*Purpose of This Document*	*The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed. This document accompanies the Agreement.*
2.1.3	*Schedule*	*The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.*
2.2.1	*Design Professional Services*	*The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.*
2.3.1	*Standard of Care for Design Professional's Services*	*Design-Builder's obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with Design-Builder's insurance advisor.*
3.5.1	*Government Approvals and Permits*	*Design-Builder is responsible for obtaining all necessary permits, approvals, and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.*
5.1.1	*Design-Builder's Insurance Requirements*	*Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.*
5.1.2	*Exclusions to Design-Build*	*Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.*

Section	Title	Instruction
5.2	Owner's Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.

Section	Title	Instruction
11.4	*Design-Builder's Right to Terminate for Cause*	*If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Section 11.6 of the General Conditions. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as set forth in Article 8 of the Agreement.*
11.6.2	*Termination for Convenience: Owner's Use of Work Product*	*Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3 of the Agreement.*
Article 12	*Electronic Data*	*Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.*

ARTICLE 1 – GENERAL

1.1 Mutual Obligations.

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

1.2 Basic Definitions.

1.2.1 Agreement refers to the executed contract between Owner and Design-Builder DBIA Document No. 545, Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects (2022 Edition).

1.2.2 Basis of Design Documents are as follows: Before execution of the Contract Price Amendment (as defined in the Agreement), the Basis of Design Documents are those documents specifically identified as Owner's Project Criteria. On and after execution of the Contract Price Amendment, the Basis of Design Documents include only those documents explicitly identified in the Contract Price Amendment as Basis of Design Documents. No document that is not explicitly referenced as a Basis of Design Document in the Contract Price Amendment, as applicable, will constitute one of the Basis of Design Documents~~For DBIA Document No. 545, Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects, the Basis of Design Documents are Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.~~

1.2.3 Construction Documents are the documents, consisting of Drawings and

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

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

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

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

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

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

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

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

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

1.2.12 GMP Proposal or Proposal means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 545, Progressive Design-Build Agreement for Water and Wastewater Projects.

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

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

1.2.15 Owner's Project Criteria are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

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

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

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

1.2.19 Substantial Completion or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

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

ARTICLE 2 - DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

2.1 General Services.

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

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

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

2.2 Design Professional Services.

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

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to

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

2.3 Standard of Care for Design Professional Services.

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

2.4 Design Development Services.

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

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

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full

listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

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

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

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

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements

and shall provide all notices applicable to the Work as required by the Legal Requirements.

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

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services (Phase 2).

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

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

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

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance.

Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

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

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

2.8 Design-Builder's Responsibility for Project Safety.

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

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

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including

those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. If the parties have opted in ~~Section~~ Article 11 of the Agreement to establish a limited time frame for the warranty set forth in this Section, the warranty in this section shall be limited to the time frame set forth in ~~Section~~ Article 11 of the Agreement. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

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

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

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

ARTICLE 3 - OWNER'S SERVICES AND RESPONSIBILITIES

3.1 Duty to Cooperate.

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

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

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

3.2 Furnishing of Services and Information.

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

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

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

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

3.2.1.4 A legal description of the Site;

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

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

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

3.3 Financial Information.

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

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

3.4 Owner's Representative.

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

3.5 Government Approvals and Permits.

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

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

3.6 Owner's Separate Contractors.

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

ARTICLE 4 -HAZARDOUS CONDITIONS AND DIFFERING SITE CONDITIONS

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the

Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

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

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's Safety Manager or Owner's 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.

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

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site, provided that the Hazardous Conditions were not created by Design-Builder or by anyone for whom Design-Builder is responsible. ~~.~~ Nothing in this paragraph shall require Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence,

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

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i)

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

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

ARTICLE 5 - INSURANCE AND BONDS

5.1 Design-Builder's Insurance Requirements.

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

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

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

5.2 ~~Owner's Liability Insurance.~~

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

~~5.3 Owner's Property Insurance.~~

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

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

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

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

~~5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.~~

~~5.4~~ Bonds and Other Performance Security.

5.42.1 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.

5.42.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

ARTICLE 6 - PAYMENT

6.1 Schedule of Values.

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

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

6.2 Monthly Progress Payments.

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

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

6.2.3 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its

Application for Payment the full undiscounted cost of the item for which payment is sought.

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

6.3 Withholding of Payments.

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

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

6.4 Right to Stop Work and Interest.

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

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will 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.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-

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

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

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

6.7 Final Payment.

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

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

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

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

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

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

Contract Documents; and

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

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

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

ARTICLE 7 - INDEMNIFICATION

7.1 Patent and Copyright Infringement.

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

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

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to

the Work by Owner or its agents after acceptance of the Work. ~~If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.~~

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

7.2 ~~Tax Claim Indemnification.~~

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

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

7.4.1 To the maximum extent allowed by Laws and regulations, Design-Builder shall indemnify, defend, and save harmless Owner, its officers, directors, and employees, from and against all Charges that arise in any manner from, in connection with, or out of, performance of the Work as a result of acts or omissions of Design-Builder, any Subcontractor, any Supplier, or any person or organization directly or indirectly employed by any of them or any entity for whose acts any of them may be liable. In performing its duties under Section 7.4.1, Design-Builder shall at its sole expense defend Owner, its officers, directors, and employees with legal counsel reasonably acceptable to Owner.

"Charges" as used herein shall mean claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses. Included within 'Charges" are:

a. interest and reasonable attorney's fees assessed as part of any such item;

b. amounts for alleged violations of sedimentation pollution or other environmental or pollution laws or regulations – including any such alleged violations that arises out of the handling, transportation, deposit, or delivery of the items or materials that are involved in performance of the Work.

c. amounts related to Hazardous Environmental Conditions; and

d. amounts related to alleged infringement of patent rights, trade secrets, proprietary information, or copyrights.

7.4.2 Neither Section 7.4.1 nor any other provision of the Contract Documents shall be construed to require Design-Builder to indemnify or hold harmless Owner, its officers, directors, or employees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Owner, its officers, directors, or employees.

7.4.3 Nothing in Sections 7.4.1 or 7.4.2 shall affect any warranties in favor of the Owner. This Section 7.4.3 is in addition to, and Sections 7.4.1 and 7.4.2, shall be construed separately from any other indemnification provisions that may be in the Contract Documents. These Sections 7.4.1, 7.4.2, and 7.4.3 shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Design-Builder under this Agreement, but this sentence does not imply that other provisions in the Contract Documents do not survive termination.

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

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

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

~~or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.~~

7.5 ~~Owner's General Indemnification.~~

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

7.6 Limited Recourse.

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

ARTICLE 8 - TIME

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

8.3 Extensions of Contract Times.

8.3.1 If any provision of the Contract Documents requires an extension of Contract Times (including but not limited to Section 8.2.1), subject to all other conditions thereto, the amount of the extension will be determined based on, and will be limited to, the number of days the Work was affected at a time when such Work was on the critical path of the Project. Notwithstanding anything to the contrary in the Contract Documents, in determining the critical path, Owner will not be bound by any schedule submitted by Design-Builder or reviewed or approved by Owner.

8.3.2 As additional conditions to entitlement for an extension of any Contract Times granted by the Contract Documents (along with any associated increase in the GMP authorized by Section 8.2.1 herein), Design-Builder must demonstrate that (i) the delay (including a Delay Event) extended the critical path of Work; (ii) Design-Builder has taken all reasonable actions to mitigate the effects of such delay events; (iii) the fault or negligence of Design-Builder (or its Subcontractors, Sub-Subcontractors, or Design Consultants) did not contribute to such delay; and (iv) Design-Builder has provided the required notice within the time required by the Contract Documents (including but not limited to Section 10.1 hereof).

ARTICLE 9 - CHANGES TO THE CONTRACT PRICE AND TIME

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

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

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner

directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

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

9.3 Minor Changes in the Work.

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

9.4 Contract Price Adjustments.

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

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

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

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

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

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

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the

disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

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

ARTICLE 10 - CONTRACT ADJUSTMENTS AND DISPUTES

10.1 Requests for Contract Adjustments and Relief.

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

10.2 Dispute Avoidance and Resolution.

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

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

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

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator ~~using the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11) and G.S. 143-128(F1), and shall be a precondition to initiating litigation concerning the dispute; provided however, that the amount of $15,000 or more must be at issue before a party may require other parties to participate in the dispute resolution process. by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.~~ Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 ~~Arbitration.~~

~~10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.~~

~~10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.~~

~~10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially~~

~~involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.~~

~~10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.~~

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 Consequential Damages.

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

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

ARTICLE 11 - STOP WORK AND TERMINATION

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

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

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

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

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

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

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract

Documents or at law, stop the Work for the following reasons:

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

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

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

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

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

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

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

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven

(7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

~~11.5 Bankruptcy of Owner or Design-Builder.~~

~~11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:~~

~~11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and~~

~~11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.~~

~~If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.~~

~~11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.~~

11.6 Termination for Convenience.

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

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

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

11.6.1.3 The amount set forth in Article 8 of the Agreement.

11.6.2 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 4 ~~Section 4.3~~ of the Agreement. ~~Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement~~.

ARTICLE 12 - ELECTRONIC DATA

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of

design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

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

ARTICLE 13 - MISCELLANEOUS

13.1 Confidential Information.

13.1.1 Confidential Information 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 Choice of Law and Forum~~Governing Law~~.

13.4.1 Choice of Law and Forum. The place of the Project is North Carolina. This Agreement shall be deemed made in Carrboro, North Carolina. This Agreement and all Contract Documents shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Orange County. Such actions shall neither be commenced in nor removed to federal court. This Paragraph shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

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

13.5 Severability.

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

13.6 No Waiver.

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

13.7 Headings.

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

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

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

ATTACHMENT B

EXHIBIT D – FUNDING AND MWBE REQUIREMENTS

MINORITY BUSINESS PARTICIPATION

Provide with the Bid:

Under GS 143-128.2(c) the undersigned Bidder shall identify on its Proposal the minority businesses that it will use on the Project and the total dollar value of the bid that will be performed by the minority businesses and list the good faith efforts **(Affidavit A)** made to solicit participation. A Contractor that performs all of the Work with its own workforce may submit an **Affidavit B** to that effect in lieu of **Affidavit A** required above.

After the Bid opening:

Orange Water and Sewer Authority will consider all bids and alternates, and determine the lowest responsible, responsive Bidder. Upon notification of being the apparent low Bidder, the Bidder shall then file within 72 hours of the notification of being the apparent lowest Bidder, the following:

> An **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 10% goal established. This affidavit shall give rise to the presumption that the Bidder has made the required good faith effort; or **Affidavit D** of its good faith effort to meet the goal. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

These forms are included herein:

(1) Identification of Minority Business Participation
(2) Affidavit A – Listing of the Good Faith Effort
(3) Affidavit B – Intent to Perform Contract with Own Workforce
(4) Affidavit C – Portion of Work to be Performed by Minority Firms
(5) Affidavit D – Good Faith Efforts

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

Identification of Minority Business Participation

I,_____,
(Name of Bidder)
do hereby certify that on this Project, we will use the following minority business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*Minority Category

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

The total value of minority business contracting will be ($)_____

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

State of North Carolina AFFIDAVIT A – Listing of the Good Faith Efforts

County of _____

Affidavit of _____ (Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive (NC Administrative Code 01 NCAC 30I .0102)

- ❑ **1 – (10 pts)** 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.
- ❑ **2 – (10 pts)** 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.
- ❑ **3 – (15 pts)** Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- ❑ **4 – (10 pts)** 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.
- ❑ **5 – (10 pts)** Attending any prebid meetings scheduled by the public owner.
- ❑ **6 – (20 pts)** Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- ❑ **7 – (15 pts)** 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.
- ❑ **8 – (25 pts)** 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.
- ❑ **9 – (20 pts)** Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ❑ **10 – (20 pts)** Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the OWNER. Substitution of contractors must be in accordance with GS 143-128.2(d). Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the BIDDER to the commitment herein set forth.

Date:_____ Name of Authorized Officer: _____

Signature: _____

Title: _____

SEAL

State of North Carolina, County of _____

Subscribed and sworn to before me this ___ day of _____ 20_____

Notary Public_____My commission expires _____

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

AFFIDAVIT B – Intent to Perform Contract with Own Workforce

County of _____

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

_____
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

SEAL

State of North Carolina, County of _____

Subscribed and sworn to before me this ___ day of _____ 20_____

Notary Public _____

My commission expires _____

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

AFFIDAVIT C – Portion of the Work to be Performed by Minority Firms

County of _____

********** (NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL) ***********

If the portion of the Work to be executed by minority businesses as defined in G. S. 143-128.2(g) is **equal to or greater than 10%** of the Bidders Total Contract Price, then the Bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive Bidder within **72 hours** after notification of being low Bidder.

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

_____
(Project Name)

Project ID#_____Amount of Bid $_____
I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

Pursuant to G. S. 143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date:_____ Name of Authorized Officer: _____

Signature: _____

Title: _____

SEAL

State of North Carolina, County of _____

Subscribed and sworn to before me this ___ day of _____ 20_____

Notary Public_____

My commission expires _____

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

AFFIDAVIT D – Good Faith Efforts

County of _____

********* (NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL) ***********

If the goal of 10% participation by minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of: _____
(Name of Bidder)

I do certify the attached documentation as true and accurate representation of my good faith efforts.
(Attach additional sheets if required)

Name and Phone Number	*Minority Category	Work description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American, Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions.
Examples of documentation include, but are not limited to, the following evidence:

A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
B. Copies of quotes or responses received from each firm responding to the solicitation.
C. A telephone log of follow-up calls to each firm sent a solicitation.
D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
F. Copy of pre-bid roster.
G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
H. Letter detailing reasons for rejection of minority business due to lack of qualification.
I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

AFFIDAVIT D – Good Faith Efforts (continued)

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date:_____ Name of Authorized Officer: _____

Signature: _____

Title: _____

SEAL

State of North Carolina, County of _____

Subscribed and sworn to before me this ___ day of _____ 20____

Notary Public_____

My commission expires _____

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

ATTACHMENT B

EXHIBIT E – INSURANCE REQUIREMENTS

1.1 Insurance Types and Limits.

1.1.1 Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of the *General Conditions*:

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required *Per Claim/Occurrence*	Minimum Limits Required *Aggregate Policy Limits*	Maximum Deductible
1. Worker's Compensation	$ 1,000,000	Statutory Limits	
2. Employer's Liability (Bodily Injury by Accident)	-	-	-
a. By Disease	$ 1,000,000	$ 1,000,000	-
b. Each Accident	$ 1,000,000	-	-
c. Each Employee	$ 1,000,000	-	-
3. Commercial General Liability	$ 1,000,000	$ 1,000,000	-
a. Bodily Injury/Property Damage per occurrence limit	-	n/a	-
b. Bodily Injury/Property Damage aggregate limit	n/a	-	-
c. Products/Completed Operation aggregate limit	n/a	$ 1,000,000	-
d. Personal and Advertising Injury aggregate limit	n/a	-	-
e. Medical Expense limit (any one person)	$ 5,000	-	-
4. Contractor's Protective Liability (if applicable)	-	-	-
5. Commercial Automobile Liability	$ 1,000,000	$ 1,000,000	-
6. Professional Errors and Omissions pursuant to Section ☐ 1.3 (A) or ☒ 1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	$ 10,000,000	$ 10,000,000	-
7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)	-	-	-
8. Umbrella Excess Liability Insurance	-	$ 4,000,000	-
9. Crane & Riggers Liability	$ 2,000,000	$ 2,000,000	-

1.1.2 The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

1.1.3 Professional Liability Insurance

1.1.3(A) Professional Liability Insurance Is To Be Provided By Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant.

☐ The professional liability policy required pursuant to Section 1.1.3(A) above shall be written on a Project specific basis and the policy premium shall be paid by Owner.

☐ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design Consultant's practice policy and shall include in the Design Consultant Agreement a provision requiring the Design Consultant to give the Design-Builder 30 Days written notice of any cancellation or non-renewal.

1.1.3(A).1 The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

1.1.3(A).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(A).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.
1.1.3(A).4 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.3(A).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of Design Consultant to ensure that such person or entity provide Design-Builder and Design Consultant with evidence of insurance to comport with this Exhibit.

1.1.3(A).6 Waiver of subrogation is to be provided in favor of Design-Builder and its officers, directors and employees, and (if commercially available) Owner and its officers, directors and employees.

1.1.3(B) Professional Liability Insurance Is To Be Provided By Design-Builder. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-Builder.

☐ The professional liability policy required pursuant to Section 1.1.3(B) above shall be written on a Project specific basis and the policy premium shall be paid by Owner.

☒ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Builder.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-Builder's practice policy.

1.1.3(B).1 The Design-Builder's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder's valid and collectible commercial general liability/umbrella excess liability policies. Notwithstanding the above, a Design-Builder's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.

1.1.3(B).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(B).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Builder.

1.1.3(B).4 The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

1.1.3(B).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design-Builder then it is the responsibility of Design-Builder to ensure that person or entity provide Design-Builder with evidence of insurance to comport with this Exhibit.

1.1.3(B).6 Waiver of subrogation is to be provided in favor of Design-Builder and Owner (if commercially available) and their respective officers, directors and employees.

1.1.4 Any coverage required to be maintained after Final Payment shall be identified below.

- Umbrella Excess Liability for a one (1) year period

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form (December 2004 Edition) or equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon by Owner and Design-Builder.

2.1.1.1 Acceptable professional liability exclusions to the Design-Builder's commercial general liability insurance are limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.

2.1.2 General Liability, Automobile Liability, Worker's Compensation/Employers Liability and Umbrella Excess Liability policies shall each include the following endorsements:

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

2.1.3 Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

2.1.5 Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

2.1.5.1 The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

2.1.5.2 Any restriction, limitation, or exclusion related to Naturally Occurring Substances must be modified so as not to apply to microbial matter and the release of such Naturally Occurring Substances as a result of the performance of Operations.

3.1 Additional Insureds

3.1.1 Owner and Owner's officers, directors and employees shall be included as an additional insured on general liability, umbrella and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder's Contractor's Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates, and upon request of the same will furnish them to the Owner. Owner shall not be an additional insured on any other of Design-Builder's policies except for those which are specifically listed below:

3.1.2 Each of the policies designated in section 3.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such entities under Worker's Compensation/Employer's Liability policies.

3.1.3 Additional Insured coverage provided under the Commercial General Liability/Umbrella/Excess and, if applicable, Design-Builder's Contractor's Pollution Liability policies, shall cover both the premises/operations and completed operations hazards.

4.1 Terms and Effective Dates.

4.1.1 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.2 If the Contractor's Pollution Policy is made on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.3 Professional Liability coverage shall be retroactive to the date that professional services first commenced.

4.1.4 If the Professional Liability coverage is provided on a Project specific basis it shall include an extended reporting period of one (1) year beyond the date for Substantial Completion of the Project unless otherwise specified.

4.1.5 All Claims-Made Policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

4.1.6 List here any coverage required to be maintained after Final Payment:

- Umbrella excess liability for a period of one (1) year

ATTACHMENT B

EXHIBIT F – FORM OF CONTRACT PRICE AMENDMENT

Owner:	Orange Water and Sewer Authority 400 Jones Ferry Road Carrboro, NC 27510
Design Builder:	[INSERT COMPANY NAME AND ADDRESS]
Agreement:	Progressive Design-Build Agreement for Guaranteed Maximum Price Design and Construction Services between OWASA and the Design-Builder
Effective Date:	[INSERT DATE]

Pursuant to Section 1.3.2.3 of the Agreement, dated _____, 20____, the Owner and the Design-Builder amend the Agreement to (i) establish a Guaranteed Maximum Price, as set forth in Section 6.6 of the Agreement, (ii) set or amend any Contract Times for the Work, as set forth in Article 5 of the Agreement, and (iii) amend any other terms and conditions of the Agreement, all as provided herein. Capitalized Terms not otherwise defined in this Contract Price Amendment shall have the meaning set forth in the Contract Documents.

1. Guaranteed Maximum Price:

1.1 The Guaranteed Maximum Price referenced in Section 6.6 of the Agreement is $_____.

1.2 The Basis of Design Documents, as defined in Section 1.2.2 of the General Conditions of Contract, are as follows:

Exhibit	**Basis of Design Document** (including Owner-Approved [INSERT DESIGN MILESTONE]% Design)

1.3 Additional Exhibits: Any additional exhibits incorporated by this Contract Price Amendment are as follows:

Exhibit	Exhibit Description
	[Amended or Supplemental Scope of Work Exhibit]
	[Schedule of Values of GMP]
	[Pre-Approved Subcontractors]
	[Additional Performance Standards and Guaranty]
	[Anticipated Weather Days]

1.4 Allowances: Any allowances agreed upon by the parties, as provided in Section 6.7 of the Agreement, are as follows:

Allowance Items	Allowance Values

1.5 Unit Prices: Any unit prices agreed upon by the parties are as follows:

Unit Price Work	Unit Price

2. Other Adjustments to Contract Price (if any): If the parties have agreed on any change to the Design-Builder's Fee or Design-Builder's General Conditions Percent, or have agreed on any other change to the Contract Price, such agreement is as follows:

Design-Builder Fee percent, as defined in Section 6.4.1, is amended to be:	[INSERT VALUE]%
Design-Builder General Conditions percent, is amended to be:	[INSERT VALUE]%
Other Changes:	

3. Contract Times:

3.1. Pursuant to Article 6 of the Agreement, the Design-Builder shall achieve Substantial Completion of the Work on or before _____ *[date certain or days after Notice to Proceed with Phase 2 Services],* which is the Scheduled Substantial Completion Date, as defined in Section 5.2 of the Agreement.

3.2. Pursuant to Section 5.2.2 of the Agreement, the Design-Builder shall achieve the following activities by the associated Milestone Dates:

Activities	Milestone Dates
[INSERT PROJECT MILESTONE]	
Substantial Completion	
Final Completion	

3.3 Liquidated Damages. As provided in Section 5.4 of the Agreement, Liquidated Damages are established or modified as follows:

Deadline	Liquidated Damages Daily Rate
Failure to achieve [INSERT PROJECT MILESTONE]	
Failure to achieve Substantial Completion	
Failure to achieve Final Completion	

4. If the parties have agreed to amend any other terms or conditions of the Contract Documents, such agreement is as follows:
[Included any amended terms or conditions from the Phase I agreement.]

5. Unless otherwise explicitly provided herein, all terms and conditions of the Contract Documents remain in full force and effect. Unless otherwise explicitly incorporated and referenced herein, neither the Design-Builder's Proposal (as defined in Section 1.3 of the Agreement) nor any portion thereof, nor any document attached thereto or referenced therein, is incorporated herein. The terms and provisions of this Contract Price

Amendment constitute the full and complete agreement between the parties concerning the subject matter hereof.

In executing this Contract Price Amendment, Owner and Design-Builder each individually represents that it has the necessary approvals to execute this Contract Price Amendment. Design-Builder executes this Contract Price Amendment under seal.

OWNER:

_____
(Name of Owner)

_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date:

DESIGN-BUILDER:

_____
(Name of Design-Builder) *(Seal)*

_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date:

OWASA Finance

_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date:

OWASA Attorney

_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date:

ATTACHMENT B

EXHIBIT G – FORM OF PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

Date of Contract: _____

Contract Name and Number: Morgan Creek Aeriel Replacement 376-05

Name of Principal (Name of Design-Builder): _____

_____

Name of Surety: _____

_____

Name and Address of Surety's NC Resident Agent: _____

_____

Contracting Body: Orange Water and Sewer Authority

Amount of Performance Bond (in words and numerals): _____

_____ dollars ($_____)

Date of Execution of these Bonds: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, and successors, jointly and severally, by these presents.

WHEREAS, the Principal has entered into a certain written agreement with the Contracting Body, dated _____, which is incorporated herein by reference in its entirety (hereinafter referred to as the "Contract"), for construction of a project known as Morgan Creek Aerial Replacement (hereinafter referred to as "the Project).

NOW THEREFORE, the conditions of this obligation are as follows:

1. That if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required

under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue. As used hereinabove, "modifications" shall include, without limitation, changes (including, without limitation, changes granting extensions of time) and additions to with respect to the Work, scope of work, and specifications.

2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach of default of the Contract:

   a. The Surety shall commence performance of its obligations and undertakings under this Performance Bond no later than thirty (30) days after written notice from the Authority to the Surety;
   b. The means, method, or procedure by which the Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the Authority.

3. If more than one surety executes this Performance Bond, such sureties collectively constitute the “Surety,” as used herein, and each such surety will be jointly and severally liable for the obligations of the Surety hereunder.

The Surety hereby waives notice of any and all modifications, omissions, additions, changes, and advance payments or deferred payments in or about the Contract and agrees that the obligations undertaken by this Performance Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Performance Bond may be brought within the time allowed by North Carolina law for suit on contracts under seal.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date of execution indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

Design-Builder - Principal (SEAL)	(Name Signed)
	(Name Printed)
	(Address)
Witness as to Principal (Name Signed)	(Phone Number)

Witness as to Principal (Name Printed)

(Surety)

ATTEST:

By:

N. C. Resident Agent
(SEAL)

Attorney-in-Fact

Witness as to Surety (Name Signed)

(Address)

Witness as to Surety (Name Printed)

(Phone Number)

(Note: If you use a raised corporate seal, press hard enough to make it legible.)

END OF FORM

PAYMENT BOND

Date of Contract: _____

Contract Name and Number: Morgan Creek Aerial Replacement; 376-05

Name of Principal (Name of Design-Builder): _____

_____

Name of Surety: _____

_____

Name and Address of Surety's NC Resident Agent: _____

_____

Contracting Body: Orange Water and Sewer Authority

Amount of Payment Bond (in words and numerals): _____

_____ dollars ($_____)

Date of Execution of these Bonds: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, for the use and benefit of any "Claimant" as the sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

WHEREAS, the Principal has entered into a certain written agreement with the Contracting Body, dated _____, which is incorporated herein by reference in its entirety (hereinafter referred to as the "Contract"), for construction of a project known as Morgan Creek Aerial Replacement; 376-05, (hereinafter referred to as "the Project).

NOW THEREFORE, the condition of this obligation is such, that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, services, and materials used or reasonably required for use in the performance of the Agreement, then this obligation shall be void; otherwise to remain in full force and effect.

A "Claimant" shall be defined herein as any person or entity entitled to recovery against the bond and any subcontractor, person, party, partnership, corporation or other entity furnishing labor, services, or materials used or reasonably required for use in the performance of the Agreement, without regard to whether such labor, services or materials were sold, leased, or rented, and

without regard to whether such Claimant is or is not in privity of the Agreement with the Principal or any Subcontractor performing Work on the Project.

In the event of any claim made by the Claimant against the Contracting Body, or the filing of a Lien against the property of the Contracting Body affected by the Agreement, the Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Agreement.

If more than one surety executes this Payment Bond, such sureties collectively constitute the "Surety," as used herein, and each such surety will be jointly and severally liable for the obligations of the Surety hereunder.

The Parties further expressly agree that any action on this Bond may be brought within the time allowed by North Carolina law for suit on contracts under seal.]

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date of execution indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

Design-Builder - Principal (SEAL)	(Name Signed)
	(Name Printed)
	(Address)
Witness as to Principal (Name Signed)	(Phone Number)
Witness as to Principal (Name Printed)	
	(Surety)

ATTEST:

N. C. Resident Agent (SEAL)	By:	Attorney-in-Fact

Witness as to Surety (Name Signed) (Address)

Witness as to Surety (Name Printed) (Phone Number)

(Note: If you use a raised corporate seal, press hard enough to make it legible.)

END OF FORM

ATTACHMENT B

EXHIBIT H – FORM OF WAIVER OF LIENS AND BOND CLAIMS

[This exhibit serves the same purpose as AIA form G706 and G706A for traditional hard-bid projects.]

WAIVER AND RELEASE OF LIEN AND PAYMENT BOND RIGHTS UPON INTERIM PAYMENT

The undersigned [INSERT SUBCONTRACTOR OR TRADE] has been employed by Orange Water and Sewer Authority furnish: _____ _____ *[describe materials and/or labor]* for the [INSERT NATURE OF WORK] known as: [INSERT PROJECT NAME], which is located in the Town of [CHAPEL HILL OR CARRBORO], County of Orange, North Carolina and is owned by Orange Water and Sewer Authority and more particularly described as follows:

[INSERT PROJECT ADDRESS, PARCEL NUMBER(S) AND REFERENCE COUNTY RECORDS AS NEEDED]

Upon receipt of the sum of $ _____, the [INSERT SUBCONTRACTOR OR TRADE] waives and releases any and all liens or claims of liens it has upon the foregoing described property or any rights against any labor and/or material bond through the date of _____and excepting those rights and liens that the [INSERT SUBCONTRACTOR OR TRADE] might have in any retained amounts, on account of labor or materials, or both, furnished by the undersigned to or on account of said contractor for said building or premises.

COUNTERPARTS AND ELECTRONIC SIGNATURES: This Waiver may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

[SIGNATURES ON FOLLOWING PAGE]

GIVEN UNDER HAND AND SEAL THIS _____DAY OF_____, 20___.

_____
(Signature of Subcontractor) (SEAL)

_____
(Printed/Typed Name and Title))

_____
(Company Name)

_____ _____
(Witness) (Address)

(Note: If you use a raised corporate seal, press hard enough to make it legible.)

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED AND RELEASED ANY AND ALL LIENS AND CLAIMS OF LIENS UPON THE FOREGOING DESCRIBED PROPERTY AND ANY RIGHTS REGARDING ANY LABOR OR MATERIAL BOND REGARDING THE SAID PROPERTY TO THE EXTENT (AND ONLY TO THE EXTENT) SET FORTH ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 90 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE AN AFFIDAVIT OF NONPAYMENT PRIOR TO THE EXPIRATION OF SUCH 90 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE.

WAIVER AND RELEASE OF LIEN AND PAYMENT BOND RIGHTS UPON FINAL PAYMENT

The undersigned [INSERT SUBCONTRACTOR OR TRADE] has been employed by Orange Water and Sewer Authority furnish: _____
_____ *[describe materials and/or labor]*
for the [INSERT NATURE OF WORK] known as: [INSERT PROJECT NAME], which is located in the Town of [CHAPEL HILL OR CARRBORO], County of Orange, North Carolina and is owned by Orange Water and Sewer Authority and more particularly described as follows:

[INSERT PROJECT ADDRESS, PARCEL NUMBER(S) AND REFERENCE COUNTY RECORDS AS NEEDED]

Upon receipt of the sum of $ _____, the [INSERT SUBCONTRACTOR OR TRADE] waives and releases any and all liens or claims of liens it has upon the foregoing property or any rights against any labor and/or material bond on account of labor or materials, or both, furnished by the undersigned to or on account of Orange Water and Sewer Authority for said property.

COUNTERPARTS AND ELECTRONIC SIGNATURES: This Waiver may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

[SIGNATURES ON FOLLOWING PAGE]

GIVEN UNDER HAND AND SEAL THIS _____DAY OF_____, 20___.

_____
(Signature of Subcontractor) (SEAL)

_____
(Printed/Typed Name and Title))

_____
(Company Name)

_____ _____
(Witness) (Address)

(Note: If you use a raised corporate seal, press hard enough to make it legible.)

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED AND RELEASED ANY AND ALL LIENS AND CLAIMS OF LIENS UPON THE FOREGOING DESCRIBED PROPERTY AND ANY RIGHTS REGARDING ANY LABOR OR MATERIAL BOND REGARDING THE SAID PROPERTY TO THE EXTENT (AND ONLY TO THE EXTENT) SET FORTH ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 90 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE AN AFFIDAVIT OF NONPAYMENT PRIOR TO THE EXPIRATION OF SUCH 90 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE.

ATTACHMENT B

EXHIBIT I – FORM OF CONSENT OF SURETY TO FINAL PAYMENT

CONSENT OF SURETY TO FINAL PAYMENT

To Owner:	Orange Water and Sewer Authority	Performance Bond No.:	
		Payment Bond No.:	
Design-Builder:			
Project:	[INSERT NAME AND ADDRESS]	Contract Date:	

In accordance with the provisions of the Agreement between the Owner and Design-Builder as indicated above,

_____[INSERT NAME AND ADDRESS OF SURETY]_____,

Surety, on bond of

_____[INSERT NAME AND ADDRESS OF DESIGN-BUILDER]_____,

Hereby approves of final payment to the Design-Builder and agrees that the final payment to the Design-Builder shall not relived Surety of any obligations to Orange Water and Sewer Authority as set forth in said Surety's bond.

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

IN WITNESS WHEREOF, THE SURETY HAS HEREUNTO SET ITS HAND AND SEAL THIS _____DAY OF_____, 20___.

_____
(Signature of authorized representative) (SEAL)

_____
(Printed/Typed Name and Title))

_____
(Company Name)

_____
(Witness)

(Note: If you use a raised corporate seal, press hard enough to make it legible.)

END OF FORM

ATTACHMENT B

EXHIBIT J – FORMS OF AFFIRMATION OF COMPLIANCE

ACKNOWLEDGEMENT OF ADDENDA

The undersigned hereby acknowledges that their submission is reflective of any addenda posted for this solicitation by checking the appropriate box(es) below:

☐ N/A – no Addenda issued

☐ Addendum 1
☐ Addendum 2
☐ Addendum 3
☐ Addendum 4
☐ Addendum 5

Signature Date

Printed Name Title

END OF FORM

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

NON–COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____ being first duly sworn, deposes and says that:

(1) He/She is the: _____
Owner, Partner, President, Vice President or other officer with evidence of authority attached

the Design-Builder to submit the attached Proposal;

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said Design-Builder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired; connived or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted; or to refrain from proposing in connection with such Contract; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Proposer, firm, or person to fix the price or prices in the attached Proposal or of any other Proposer, or to fix any overhead, profit, or cost elements of the Proposal or of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Contract;

(5) The cost elements or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Design-Builder or any other of its agents, representatives, owners, employees or parties in interest, including this affidavit.

(6) Affiant further warrants that no person or selling agency has been employed for retained to solicit or secure such contact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees for bona fide established commercial or sell agencies maintained by the Design-Builder for the purposes of securing business.

_____
Name of Design-Builder

_____
Design-Builder (Affiant)

Subscribed and sworn to before me this _____ day of _____ , 20___

_____ My commission expires: _____

Notary Public (SEAL)

END OF FORM

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

NON-COLLUSION AFFIDAVIT FOR SUBCONTRACTOR(S)

STATE OF _____

COUNTY OF _____

_____being first duly sworn, deposes and says that:

(1) He/She is _____ of _____, hereinafter referred to as the "Subcontractor";

(2) He/She is fully informed respecting the preparation and contents of the Subcontractor's Proposal submitted by the Subcontractor to_____ _____, the Contractor for certain work in connection with the _____ Contract pertaining to the Project in _____ (City or County, and State);

(3) Such Subcontractor's Proposal is genuine and is not a collusive or sham proposal;

(4) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract or to refrain from submitting a Proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Bidder, firm or person to fix the price or prices in said Contractor's Proposal, or to fix any overhead, profit or cost element of the price or prices in said Contractor's Proposal, or to secure through collusion, conspiracy connivance or unlawful agreement any advantage against the _____ (Local Public Agency) or any person interested in the proposed Contract; and

(5) The price or prices quoted in the Subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

_____
Title

Subscribed and sworn to before me this _____ day of _____ , 20___

_____ My commission expires: _____

Notary Public

(Seal)

END OF FORM

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

During the performance of this Contract the Contractor agrees as follows:

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

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract understanding, a notice; to be provided, advising the labor union or worker's representative of the Contractor's commitments under the Equal Employment Opportunity Section of this Contract, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Owner Contracts,

e. The Contractor will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Owner so that such provisions will be binding upon each Subcontractor or vendor.

(Complete this section for signatures by a CORPORATION):

(CORPORATE SEAL)

_____
Corporate Name

ATTEST:

_____ BY: _____
Secretary* or Assistant Secretary* President* or Vice President*

*choose one

(Complete this section for signatures by PARTNERSHIP and INDIVIDUAL):

WITNESS:

_____ BY: _____ (Seal)

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

ACKNOWLEDGEMENT FOR EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

Corporate Acknowledgement

(Use this portion of the form for acknowledgement of signature by a Corporation):

STATE OF _____

COUNTY OF _____

I, the undersigned notary public, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is *Secretary* or Assistant Secretary** of _____, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its *President* or Vice President**, sealed with its corporate seal, and attested by himself as its *Secretary* or Assistant Secretary**.

**choose one*

WITNESS my hand and notarial seal this _____day of _____, 20____

_____
Notary Public

My commission expires _____.
(SEAL)

Individual or Partnership Acknowledgement

(Use this portion of the form for acknowledgement of signature by a partnership or an individual.)

NORTH CAROLINA

(Enter correct State and County if different than shown.)

_____ COUNTY

I, the undersigned Notary Public, do hereby certify that, _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this _____ day of _____ , 20___

_____
Notary Public (SEAL)

My commission expires: _____.

END OF FORM

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

NON-DISCRIMINATION CLAUSE

It is specifically agreed as part of the consideration of the signing of this Contract that the parties hereto, their agents, officials, employees or servants will not discriminate in any manner on the basis of age, handicap, race, color, creed, sexual orientation or national origin with reference to the subject matter of this Contract, no matter how remote.

This provision being incorporated for the benefit of the Orange Water and Sewer Authority and its residents may be enforced as set out in said ordinances; enforcement of this provision shall be by action for specific performance, injunctive relief, or other remedy as by law provided.

This provision shall be binding on the successors and assigns of the parties hereto with reference to the subject matter of this Contract.

SIGNATURE FOR CORPORATION

_____
Corporate Name

ATTEST:

_____ BY: _____
Secretary* / Assistant Secretary* President* / Vice President*

_____ _____
(Printed Name) (Printed Name)

(Corporate Seal)

INDIVIDUAL OR PARTNERSHIP SIGNATURE

BY: _____(SEAL)
(Printed Name)

WITNESS:

_____

_____
(Printed Name)

*choose one

END OF FORM

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

E-VERIFY AFFIDAVIT

I,_____(the individual attesting below), being duly authorized by and on behalf of

_____ (the entity identified as the "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Article 2 of Chapter 64 of the North Carolina General Statutes.

2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with Article 2 of Chapter 64 of the North Carolina General Statutes.

3. Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer for specified contracts subject to E-Verify entered into with the Orange Water and SewerAuthority.

This_____day of_____,_____.

_____

Signature of Affiant

Print or Type Name: _____

State of_____County of _____

Signed and sworn to (or affirmed) before me, this the _____

day of_____,_____.

My Commission Expires:

_____ _____

Notary Public

(Affix Official/Notarial Seal)

Name of Counterparty:

_____

END OF FORM

CERTIFICATION REGARDING CONFLICT OF INTEREST

The Submitter is required to certify that performance of the work will not create any conflicts of interest or disclose any actual or potential conflicts of interest by completing and signing one of the following statements:

All Vendors should be aware of OWASA'S Code of Ethics, which prohibits OWASA Employees and Board Members from having certain relationships with persons or entities conducting (or proposing to conduct) business with OWASA and which prohibits the acceptance of gifts from Vendors. If the Vendor has an actual or potential conflict, the Vendor shall disclose any Conflict of Interest that may exist.

Conflicts of Interest (Potential or actual) will be evaluated by OWASA'S General Counsel to determine the proper course of action. Failure to comply with the provisions established above may render the vendor ineligible to participate in OWASA'S procurement process.

The Submitter hereby discloses no conflicts of interest.

DATE: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

SUBMITTER/COMPANY NAME: _____

OR

The Submitter hereby discloses the following circumstances that could give rise to a conflict of interest for the Submitter, any affiliates, any proposed subconsultants, and key personnel of any of these organizations. (Attach additional sheets as needed.)

Name of the Individual/Company to which potential conflict of interest might apply:

_____

Nature of potential conflict of interest:

_____

_____

_____

_____

Proposed Remedy:

_____

_____

_____

_____

DATE: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

SUBMITTER/COMPANY NAME: _____

END OF FORM

CIP NO.: 376-05
PROJECT: Morgan Creek Aerial Replacement
DATE: March 17, 2025

IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. 143C-6A-5(a)

RFQ Number (if applicable): _____

Name of Contracting Party or Bidder:

_____

As of the date listed below, the vendor or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

_____

Signature Date

_____

Printed Name Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

END OF FORM

COMPANIES BOYCOTTING ISRAEL DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. §147-86.81et seq. *

RFQ Number (if applicable): _____

Name of Contracting Party or Bidder:

_____

Pursuant to N.C.G.S. §**147-86.81**, any person identified as engaging in a boycott of Israel, as defined by this Act. In addition, State agencies must divest from investments in such restricted companies, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.81, is ineligible to contract with the State of North Carolina or any political subdivision of the State.

As of the date listed below, the supplier or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. §147-86.81.

The undersigned hereby certifies that he or she is authorized by the contracting party or bidder listed above to make the foregoing statement.

_____

Signature Date

_____

Printed Name Title

N.C.G.S. §147-86.81requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. § 147-86.81(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at: https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Divestment-Acts-Resources.aspx and will be updated every 180 days.

* Note: Enacted by Session Law 2017-193 as N.C.G.S. §147-86.81*et seq*.

END OF FORM

ATTACHMENT B

EXHIBIT K – ADDITIONAL FORMS

NC SALES & USE TAX AFFIDAVIT FORM

See next page.

NORTH CAROLINA SALES & USE TAX
AFFIDAVIT FORM
(Paid During The Current Period Ending)

PROJECT: _____ **PROJECT LOCATION:** _____ **COUNTY:** _____
OWNER: _____ **REPORTING PERIOD:** **START DATE:** _____ **ESTIMATE NO:** _____
CONTRACTOR: _____ **END DATE:** _____

DATE	VENDOR	INVOICE NUMBER	INVOICE SUBTOTAL	STATE TAX	COUNTY TAX	LOCAL TAX	TOTAL TAX	INVOICE TOTAL
		TOTALS:						

I certify that the above listed vendors were paid sales tax upon purchase of building materials during the period covered by the construction estimate and the property upon which such taxes were paid with or will be used In the performance of this contract. No tax on purchases or rentals of tools and/or equipment is included in in the above list. All of the material above became a part of or is annexed to the building(s) or structure(s) being erected, altered or repaired.

Sworn to and subscribed to before me this _____ day of _____, _____

_____ _____
Notary Public **Contractor's Signature**

My Commission Expires: _____

END OF FORM

DESTRUCTIVE WEATHER CHECKLIST

CIP Manager will review this spreadsheet for completeness on the 1st of the month from June through December, and at each of the various planning modes when Destructive Weather protocol has been implemented.

DESTRUCTIVE WEATHER CHECKLIST FOR CIP

Pre-Planning (OWASA PM)	Review this checklist with construction team at pre-construction meeting
	Review this checklist with construction team at start of hurricane season
	Inspect the site monthly during hurricane season to identify trash, debris, and any construction equipment or materials that are no longer needed and should be removed by the contractor
	Confirm emergency contact info above and on next spreadsheet tab at start of hurricane season
72-hour Planning Mode (OWASA PM)	Inform construction team (typically: engineering project manager, construction observer, prime contractor project manager and superintendent) that destructive weather is expected within 72 hours
	Review this checklist with construction team
	Visit site and document pre-event site conditions
	Convey to contractor the expectations for actions to be taken for 48-hour Planning Mode
	If sewer bypass is expected to continue through potential destructive weather, ensure that bypass information is entered into GIS, maps are prepared and distributed per protocol, and arrange for onsite meeting with D&C Manager and/or Assistant Manager.
	Confirm emergency contact info above and on next spreadsheet tab
	Verify once contractor has completed all 72-hour Planning Mode actions
72-hour Planning Mode (Contractor)	Continue with normal construction operations but with added diligence to regular daily housekeeping, such as consolidation of rubbish and construction materials.
	Communicate to personnel / subcontractors that destructive weather is expected within 72 hrs.
	Ensure that 48-hr Planning Mode actions can be quickly met should timing of event accelerate
	Ensure trailers are properly anchored (including conex boxes).
48-hour Planning Mode (OWASA PM)	Monitor weather forecasts to assess the possibility/timing that 24-hour planning mode will be set
	Visit job site to determine what actions need to be taken if 24-hour planning mode is set.
	Notify contractor that immediate action may be required should the 24-hour planning mode be set
	If 24-hour planning mode may be enacted on a weekend/holiday, confirm that the contractor will be required to respond during daylight hours (whether Saturday or Sunday) to immediately meet all requirements for that condition.
	Verify once contractor has completed all 48-hour Planning Mode actions
48-hour Planning Mode (Contractor)	Normal construction operations may continue, but active preparation of job sites must begin.
	Communicate to personnel / subcontractors that destructive weather is expected within 48 hrs.
	Confirm to OWASA PM that the 24-hour actions can be quickly met, if required (i.e., should timing accelerate), including if 24-hour planning mode falls on weekend/holiday.

CIP Manager will review this spreadsheet for completeness on the 1st of the month from June through December, and at each of the various planning modes when Destructive Weather protocol has been implemented.

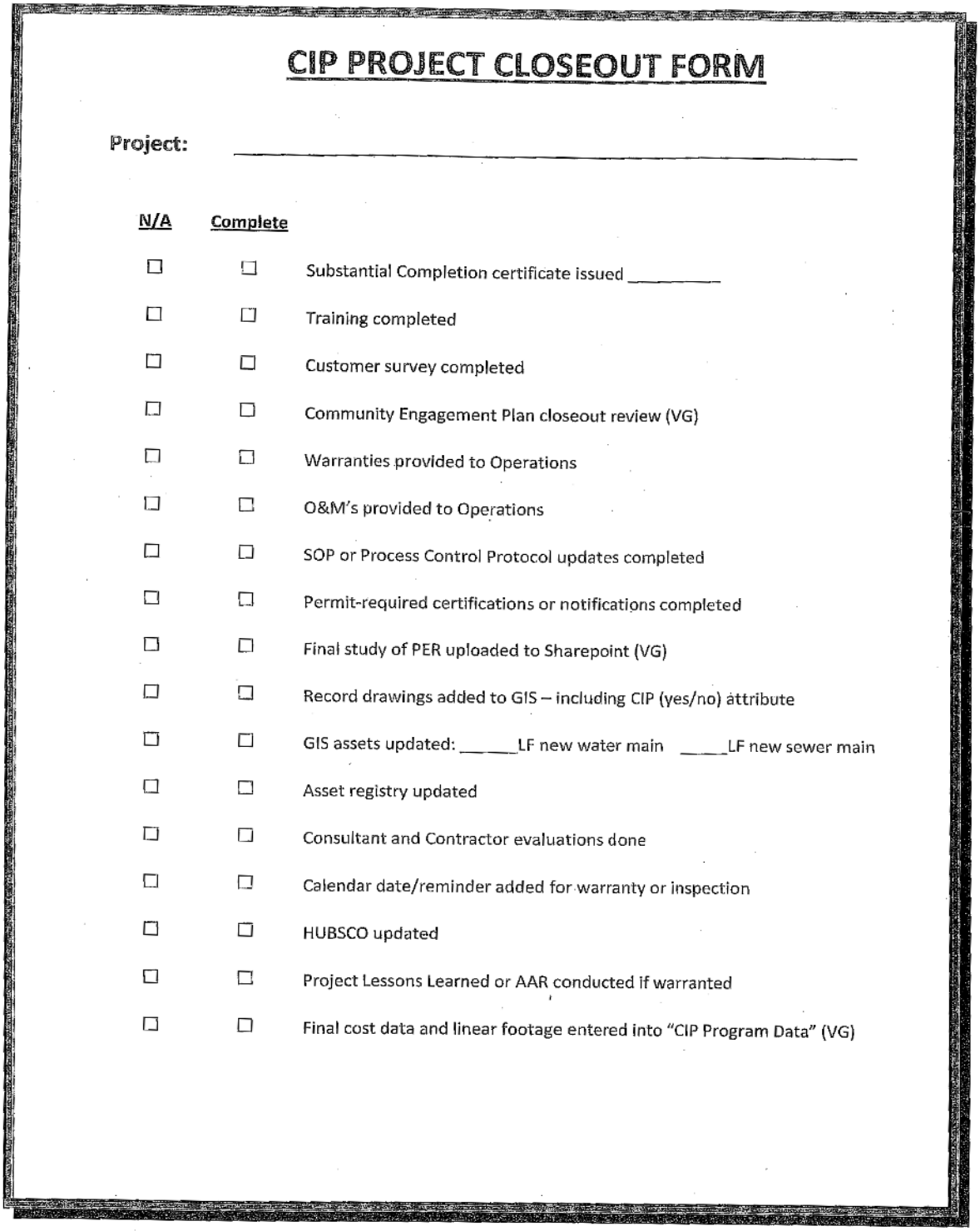
24-hour Planning Mode (OWASA PM)	Instruct contractor to report to job site at first daylight to take the actions below
	Inspect active job sites at 1st daylight to ensure that requirements for this condition have been met.
	Email CIP Manager to confirm that 24-hr planning mode requirements have been met.
24-hour Planning Mode (Contractor)	Interrupt construction operations and shift priority to preparing the site for destructive weather.
	Communicate to personnel and subcontractors that destructive weather is expected within 24 hours and these specific action items are required.
	Conduct all actions with idea that the job site may have to be evacuated within hours.
	Remove all missile hazards from the site.
	Securely close all building openings.
	Disconnect all temporary power.
	Remove or secure all equipment
	Remove or firmly secure (by banding, cables, or rope) all bulk materials.
	Firmly secure all scaffolding. Remove all planking.
	Contractor shall not secure the job site for the day until the above requirements have been met.

12-hour Planning Mode	All outside work on OWASA job sites will have been secured. Construction team will closely monitor local media to stay abreast of weather developments.

Destructive weather has passed (OWASA PM)	Coordinate with contractors/consultants to visit each active job site for damage assessment
	Document damage with photographs
	Email CIP Manager with damage assessment summary and site-specific recovery plans.

END OF FORM

CIP PROJECT CLOSEOUT FORM



CIP PROJECT CLOSEOUT FORM

Project: _____

N/A	Complete	
☐	☐	Substantial Completion certificate issued _____
☐	☐	Training completed
☐	☐	Customer survey completed
☐	☐	Community Engagement Plan closeout review (VG)
☐	☐	Warranties provided to Operations
☐	☐	O&M's provided to Operations
☐	☐	SOP or Process Control Protocol updates completed
☐	☐	Permit-required certifications or notifications completed
☐	☐	Final study of PER uploaded to Sharepoint (VG)
☐	☐	Record drawings added to GIS – including CIP (yes/no) attribute
☐	☐	GIS assets updated: _____LF new water main _____LF new sewer main
☐	☐	Asset registry updated
☐	☐	Consultant and Contractor evaluations done
☐	☐	Calendar date/reminder added for warranty or inspection
☐	☐	HUBSCO updated
☐	☐	Project Lessons Learned or AAR conducted if warranted
☐	☐	Final cost data and linear footage entered into "CIP Program Data" (VG)

END OF FORM

OWASA Project Delivery Decision Modeling Tool Example

Morgan Creek Aerial Rehabilitation Project

Project Delivery: Benefit Scoring

	Criteria	Project Delivery Alternatives - Raw Scores				Project Delivery Alternatives - Weighted Benefit Scores		
		Design-Bid-Build	CMAR	Progress Design-Build	Criteria Weighting	Design-Bid-Build	CMAR	Progress Design-Build
A	Procurement Efficiency	3	1	5	6.82%	0.20	0.07	0.34
B	Owner Ease and Ability to Impact Project	1	3	5	9.55%	0.10	0.29	0.48
C	Low Price a Priority to Quality	5	1	1	18.18%	0.91	0.18	0.18
D	Owner Ability to select Best Value subcontractors (MWBE)	1	5	4	9.09%	0.09	0.45	0.36
E	Collaborative Schedule Management	2	3	5	10.00%	0.20	0.30	0.50
F	Cost Certainty	1	4	4	12.27%	0.12	0.49	0.49
G	Owner Ability to Select Best Value Designer and/or Contractor	3	5	4	12.27%	0.37	0.61	0.49
H	Owner Driven Schedule	5	2	2	18.18%	0.91	0.36	0.36
I	Performance Guarantee Provided	1	1	5	3.64%	0.04	0.04	0.18
	Totals	22	25	35	100.00%	2.94	2.80	3.39

Scores

5 = Maximum Benefit
4 =
3 = Equal Benefit
2 =
1 = Minimum Benefit

Instructions:
1) This entire worksheet should be automated based on selections made on the Criteria and Weighting worksheets. This is the results and indicates which delivery model is most advantageous for the particular project.
2) If results don't seem appropriate, values can be changed on Criteria and Weighting worksheets per instructions on those worksheets.
3) If desired, in the chart, select data series and in the data box window the user can unselect any unused criteria.

