

REQUEST FOR QUALIFICATIONS

Construction Manager At-Risk (CMAR) Contractor Services

2024 Mitchell Water Treatment Plant Residuals and Emerging Contaminants CMAR



City of Greensboro Department of Water Resources

**DATE ISSUED
September 17, 2024**

City of Greensboro, North Carolina
Request for Qualifications
2024 Mitchell Water Treatment Plant
Residuals and Emerging Contaminants CMAR

SOLICITATION

Section 1 Background

1.1 Introduction

This Request for Qualifications (RFQ) for the 2024 Mitchell Water Treatment Plant Residuals and Emerging Contaminants CMAR (Project) by the City of Greensboro (City or COG), hereinafter referred to in this document as the Owner, invites Statements of Qualifications (SOQs) according to the requirements set forth in this RFQ, including the format and guidelines in Section 5. Owner will review and evaluate the SOQs submitted from interested contractors (Respondents) as described in Section 6. Owner intends to select a Respondent to award, or enter into negotiations for award, of a Construction Manager at Risk (CMAR) Contract.

The Owner intends to select and make award for these services to Contractor (Respondent or CMAR) using the Procurement Process in Section 4. The procurement process is intended to evaluate and identify contractors with the requisite experience, qualifications, and resources to complete the Project successfully within an agreed upon Guaranteed Maximum Price (GMP) in accordance with project requirements that will be specified by the Owner. This RFQ will place an emphasis on the Respondent's demonstrated ability on past projects of similar size and nature, ability to meet project schedule, appropriate licensing for Public Utility construction, and commitment to the City's M/WBE Program.

The following firms are serving on the Engineering team for this project and are not eligible to be part of any CMAR team:

- HDR Engineering of the Carolinas, Inc.
- CDM Smith, Inc.
- CriTek Engineering Group
- Davis-Martin-Powell & Associates, Inc.
- Arcadis
- SAMR

1.2 RFQ Organization

This RFQ consists of seven Sections and seven Attachments:

- Section 1: Background
- Section 2: Project Overview
- Section 3: CMAR Services
- Section 4: Procurement Process
- Section 5: SOQ Submission Requirements

- Section 6: SOQ Evaluation and Selection
- Section 7: Conditions for Respondents
- Attachment A – Owner’s Evaluation Form
- Attachment B – Cover Page
- Attachment C– Respondent Information
- Attachment D – Details of Past Projects
- Attachment E – Respondent Affidavit
- Attachment F –Minority and Women Business Enterprise (M/WBE) Program Definitions, Vendor Responsibilities and Affidavits
 - Definitions
 - Vendor Responsibilities
 - Affidavit C: Subcontractor Utilization Commitment
 - Affidavit D1: Letter of Intent to Perform as a M/WBE Subcontractor
 - Affidavit D3: Letter of Intent to Perform as a 2nd Tier Subcontractor to the Prime Contractor
- Attachment G – Sample Contract

The contents of the RFQ Attachments take priority over any conflicting statements in the RFQ Sections.

1.3 Owner Objectives

- **Quality** – Provide high quality treatment facilities that will be sustainable and reliable in full compliance with federal and state regulations through close coordination between the Owner, Engineers and CMAR.
- **Cost** – Provide early cost control and early cost certainty through use of CMAR estimating systems, appropriate value engineering and appropriate CMAR input to the Engineer during design and construction phases of the Project.
- **Schedule** – Provide early schedule control and early schedule certainty through use of CMAR scheduling and procurement systems, appropriate value engineering and appropriate CMAR input to the Engineers during design and construction phases of the Project.
- **Risk** – Achieve most reasonable risk sharing between Owner and CMAR through development of Risk Register and continued updates based on the philosophy that any identified risk should be controlled by the party in the best position to control the risk.
- **Safety** – Achieve effective safety program using best practices of the CMAR that exceed best industry practices.
- **M/WBE** – Ensure minority and women owned firms are afforded maximum practical opportunity to participate in the performance of the contract.

Section 2 Project Overview

2.1 Project Scope

The Project consists of the following key components:

- Upgrade existing conventional treatment systems
- Improve backwash and residuals systems
- PFAS treatment and regulatory compliance
- Upgrade operations, maintenance, and laboratory systems

The Work is anticipated to include, but is not limited to:

Residuals Improvements:

- Conventional Treatment Work
 - Replacement of rapid mixers with static mixers
 - Reconfiguration of flocculation and sedimentation basins (raising the walls)
 - Installation of settling plates and sludge removal equipment in sedimentation basins
 - Replacement of filter media and filter inspection
- Residuals Improvements
 - Modifications of Existing Equalization Basin
 - Installation of Residuals Treatment Facilities including plate settlers
 - Recycle Pump Station
 - Backwash Transfer Pump Station
 - Replacing Pumps
 - Piping and Valve Replacement
- Drain Improvements
 - Replaces gravity line
 - Connection to new 54" gravity line (different contract)
 - Jack and Bore under Benjamin Parkway
- Clearwell Improvements
 - Structural Repairs
 - Roof repairs
- Miscellaneous
 - Brick Fencing and new plant entrance
 - Lighting modifications

Emerging Contaminants:

- Pump Station
 - New pump station to transfer filtered water to GAC system

- GAC system
 - Deep gravity contactors
 - Backwash and slurry water pump station
 - Requires connection into Residuals project
- New Operations and Maintenance Facility
 - Multi-story with new offices and conference spaces
 - Maintenance facility to include storage and work areas
- Rehabilitated Lab / Control Room
 - Repurpose existing lab / control room, lobby, and breakroom
 - Requires maintenance of plant activities during construction
- Site Work and Chemical Facilities
 - Extension of brick fencing
 - Relocation of OH electrical line (Duke scope)
 - Stormwater improvements
 - Site access roads
 - Filter blower replacement
 - Relocation of chemical facilities
 - SCADA improvements

The Project is located at the Mitchell WTP owned and operated by the City of Greensboro, North Carolina. Close coordination of construction activities with the Owner's operating staff and for the Project will be required. The successful Respondent will be required to furnish all labor, materials, equipment, tools, services and incidentals to complete the Work in accordance with the Specifications and Drawings.

The Owner will not be responsible for costs incurred by Respondents because of participation in this procurement process. Respondent shall bear its own expense in connection with the preparation and submission of materials and the provision of any supplemental information requested.

Decisions by the Owner shall not constitute a determination that the Respondent is a responsible Contractor. Respondent may be subsequently rejected based on subsequently discovered information. The Owner's action in rejecting a Respondent in this regard is final. The Owner reserves its right to require interviews of one, or more, Respondents during the procurement process.

The Owner is not to be responsible for, nor liable for, cost incurred by Respondents in connection with the review and evaluation of qualification materials and any findings and determinations made therefrom, including any interviews of Respondents required by the Owner during the procurement process.

2.2 Project Cost and Funding

The estimated construction cost for this project is in the range of \$100 – 140 million. The Owner has sufficient funding available for this project.

2.3 Project Schedule

It is anticipated that Pre-Construction services will be required of the CMAR contractor in the first quarter of 2025. Onsite construction activities are anticipated to begin in the third quarter of 2025. The Emerging Contaminants portion of the Project contains elements (Pump Station, GAC System, and associated site work) that must be completed to meet the PFAS compliance deadline. The current PFAS compliance deadline is April 2029 and the current anticipated total project completion is 2028. Please provide a project schedule with any key assumptions as part of your project approach. Close coordination will be required among the City, Engineers, and CMAR throughout the Project.

2.4 M/WBE Participation

The Greensboro City Council adopted an ordinance implementing a Minority and Women Business Enterprise (“M/WBE”) Program Plan. The City strongly encourages the participation of certified Minority and Woman-Owned Businesses on city contracts. M/WBE participation in the Preconstruction Services (Phase 1) will be evaluated based on utilization. The participation percentage for Pre-Construction Services (Phase 1) should be based on the total contract amount for this phase only (e.g., \$300,000.00, 5% = \$15,000). Respondents are required to provide with their submittal a detailed summary of services being performed by any certified M/WBE firms in this Phase (refer to Attachment F).

The City’s Goal Setting Committee will establish M/WBE goals for Phase 2 (Construction) with the selected CMAR in accordance with North Carolina General Statute 143.128. The CMAR will be required to submit pre-qualification requirements, detailed bid packages, and a comprehensive plan to achieve the M/WBE participation goals.

Section 3 CMAR Services

3.1 General

The CMAR Services include Pre-Construction and construction services for the Project using the CMAR method of project delivery. The minimum scope of services includes collaboration with the design engineers and City staff throughout the project, cost estimating services, value engineering ideas, project phasing plan, development of a guaranteed maximum price (GMP) proposal(s), and, assuming successful negotiation of the GMP(s) with the Owner, ultimately entering into a construction agreement for the construction of the Project.

The CMAR services for the 2024 Mitchell WTP Residuals and Emerging Contaminants CMAR Project will be provided in two phases: Pre-Construction Phase Services (Phase 1) and Construction Phase Services (Phase 2). The MWBE List provided in the RFQ is for Pre-Construction (Phase 1) services based on the following potential MWBE opportunities:

- Constructability and VE Reviews
 - General
 - Site Civil
 - Electrical
 - Concrete
 - SCADA
 - Mechanical – HVAC/Plumbing

- Estimating
 - Site Civil
 - Electrical
 - Mechanical – HVAC/Plumbing

- MWBE/Public Outreach
 - Bid Package Development
 - MWBE/Subcontractor Outreach

Please note that the CMAR and any CMAR Pre-Construction (Phase 1) subcontractors are ineligible to bid on work packages in Construction (Phase 2). While we do not have all of the details for Construction (Phase 2) of the CMAR Project at this time, the following is a list of potential types of work that could be included:

- Fencing
- Landscaping
- Seeding and Mulching
- Site grading/Earthwork
- Vertical Concrete
- Horizontal Concrete
- Masonry
- Site Demolition
- Process Demolition
- Process Mechanical Piping
- Process Mechanical Equipment Furnish and Install
- Precast Building
- Doors
- Chemical System Complete
- HVAC
- Utilities
- Traffic Control
- Erosion Control
- Shoring
- Asphalt
- Stone
- Storm Drainage Piping
- Jack and Bore
- Confined Space Site Work
- Piles
- Concrete Repairs/Restoration (vertical, horizontal elevated)
- Electrical
- Plumbing
- Instrumentation and Controls
- Carpentry
- Casework
- Tiling
- Flooring
- Fire Sprinkler Systems
- Painting

Please note that this list may change as we continue to develop the design details and work through value engineering with the CMAR.

3.2 Summary of Construction Manager at Risk Services

The specific services of the selected CMAR firm for this project will be defined in the final CMAR Agreement and the Contract Documents. The CMAR services will be provided in two phases: Pre-Construction Phase Services (Phase 1) and Construction Phase Services (Phase 2). CMAR services are anticipated to include, but not be limited to, the following:

Pre-Construction Phase Services (Phase 1) include scheduling, estimating, and development of a proposed Guaranteed Maximum Price (GMP) for Project construction.

- Advise and consult on aspects of constructability and phasing.
- Work with Owner and Engineers to create parameters for quality, cost and time.
- CMAR led Kick-Off/Coordination Meeting to review the project approach, schedule, budget, key milestones and communication protocol.
- Review conformed 100% Residuals Package drawings and provide review comments relative to cost control, schedule control, constructability and participate in a Value Engineering meeting, as appropriate. The conformed documents for the Residuals Package are available upon request.
- Review 30% and 60% Emerging Contaminants Design Package and provide review comments relative to cost control, schedule control and constructability and participate in a Value Engineering meeting as appropriate. Provide updated project schedule and updated Project Estimated Cost for full GMP(s) including both Residuals and Emerging Contaminants packages.
- Develop and submit to the Owner CMAR bidding strategy and process (M/WBE Inclusion Plan) for developing packages and GMP(s) to achieve Phase 2 (Construction) M/WBE goals.
- Review 90% Emerging Contaminants Design Package and provide review comments relative to cost control, schedule control and constructability and participate in a Value Engineering meeting as appropriate. Provide Updated Project Schedule and confirmation of GMP(s).
- Prepare detailed cost estimates for 100% Residuals package and at 30%, 60% and 90% stage of the Emerging Contaminants package to ensure project stays within budget.
- Develop a phasing and sequencing plan with the Owner and Engineers.
- Work with the City and the M/WBE Office to develop preliminary bid packages that will allow for maximum M/WBE subcontractor participation and submit construction estimates and scopes of work to the City for setting M/WBE goals.
- Coordinate with the City and the M/WBE Office to establish the Pre-qualification process and requirements, and adhere to the City's Pre-qualification Policy as it relates to the CMAR packages.
- Prepare early procurement of materials/equipment if project warrants.

Construction Phase Services (Phase 2) are contingent upon City approval to proceed with the CMAR proposed GMP(s) and negotiation and execution of a mutually acceptable Agreement between the City and CMAR. Construction Phase services include the completed construction for the Project under the CMAR-GMP with the CMAR competitively procuring and contracting with the subcontractors and assuming the responsibility and the risk of construction delivery within the specified cost and schedule terms.

- Manage the construction process including coordination of all subcontractors, vendors and equipment suppliers.

- Manage commissioning, close-out and warranty phases.
- Manage the CMAR construction including coordination efforts between contract tie-in points and overall progress schedule.
- Work with the City to ensure M/WBE program compliance.
- Prepare the overall project schedule, and provide at a minimum, monthly detailed updates.
- Conduct monthly progress meetings and monthly payment applications.
- Establish and maintain all quality control standards.
- Utilize AutoCAD for completion of Record Drawings in an acceptable format to the City.

The CMAR and any CMAR Phase 1 subcontractors are ineligible to bid on work packages in Phase 2. The CMAR may self-perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the City approves of the CMAR's performance of the work.

3.3 Roles and Responsibilities

Owner: The Owner will cooperate with the Engineers and CMAR and will fulfill its responsibilities in a timely manner to facilitate the CMAR's timely and efficient performance of services. Owner responsibilities include:

- Review submissions and provide comments to Engineers and CMAR.
- Furnish existing studies and provide complete, accurate, and reliable data and information regarding the Project, including record drawings, preliminary studies, environmental impact assessments, etc.
- Provide information and provide (or engage Engineer or CMAR to perform) additional studies that may be necessary to complete the Project.
- Provide adequate funding.
- Provide access to the Project site and any necessary easements.
- Obtain the governmental approvals and permits Owner is responsible for, and assist CMAR in obtaining governmental approvals and permits CMAR is responsible for.

CMAR: The CMAR will cooperate with the Owner and Engineers and will provide in a timely manner the services necessary to complete the general Project scope specified in this RFQ as well as the final design documents prepared by the Engineer. CMAR responsibilities include:

- Prepare construction documents.
- Supervise subcontractors and CMAR personnel.
- Procure materials, equipment, and subcontractors.
- Obtain certain governmental approvals and permits.
- Maintain site security.
- Conduct performance testing.
- Implement quality-management procedures to provide Quality Assurance and Quality Control of the Construction Services.
- Implement Project health and safety practices.

Engineers: The Engineers will cooperate with the Owner and CMAR and will provide design services in a timely manner to facilitate the CMAR's timely and efficient performance of services. Engineer responsibilities include:

- Prepare design documents.
- Provide design and inspection services during construction
- Review submissions and provide comments to CMAR.
- Provide Quality Assurance Checks as authorized by the Owner.

Section 4 Procurement Process

4.1 Communications and Respondent Contact

Each Respondent shall provide Owner with the Respondent's single point of contact for the receipt of any future documents, notices, and addenda associated with this RFQ.

4.2 Communications and Engineering Contact

All requests for the RFQ and any questions related to the RFQ shall be directed via email to the Owner Contacts as follows:

To:

Monica Jarrett, City of Greensboro

Phone: 336-373-7792

Email: Monica.Jarrett@greensboro-nc.gov

CC:

Kip Kalisiak, HDR

Phone: 919-407-9474

Email: Kip.Kalisiak@hdrinc.com

4.3 Procurement Schedule

- Issue RFQ: September 17, 2024
- Pre-submittal meeting: October 2, 2024 at 10 am
- Deadline for Questions: October 15, 2024 by 12 pm
- Submit SOQ: October 23, 2024 by 12 pm
- Optional Interviews: November 14, 2024
- SOQ evaluation and selection: November 14, 2024

4.4 Pre-submittal Meeting and Site Tour

Owner will conduct a pre-submittal meeting for those interested in responding to the RFQ. **Attendance at this meeting is mandatory.** The meeting will be held at **Mitchell Water Treatment Plant** located at **1041 Battleground Avenue, Greensboro, NC 27408** on **October 2, 2024** starting at **10:00 am**. At this meeting, Owner will offer information about the Project and the procurement process. Those who attend the pre-submittal meeting will have the opportunity to tour the Project site

following the meeting to familiarize themselves with site conditions and constraints. Respondents shall advise the Owner Contact by **September 27, 2024** of the names of individuals who will attend the pre-submittal meeting. Due to space constraints, each firm is limited to **three** attendees at the meeting and site tour.

A virtual pre-submittal meeting option will be available if more than 3 attendees per respondent is desired. The plant tour will NOT be part of the virtual meeting. A plant tour will NOT be available at any other time during the RFQ submittal time frame.

Section 5 SOQ Submission Requirements

5.1 Submittal Place and Deadline

SOQs for the Project will be received by the Owner at the following address:

Monica Jarrett, E.I.
City of Greensboro, Department of Water Resources
2602 South Elm-Eugene Street
Greensboro, NC 27406

SOQs will be received **until 12:00 p.m. local time on October 23, 2024**. All interested Respondents are required to submit one original (wet ink) bound proposal, two (2) hardcopies of their SOQ as well as an electronic copy in searchable PDF format (provided on a flash drive) with the required materials.

5.2 Submission Format and Content – Statement of Qualifications Requirements

Respondent must complete and submit an original and two (2) hardcopies (for a total of three (3) sets) and an electronic copy in PDF format of their submittal with all associated forms and attachments, which together comprise the Respondent's SOQ. The SOQ shall be signed where indicated and submitted in a sealed envelope to the Owner. The contractor's name and the Project name should be clearly displayed on the outside of the envelope. The SOQ shall include a one-page cover letter plus a maximum of thirty five (35) 8.5 x 11 inches pages to address the SOQ criteria. 11 x 17 inches pages may be used but one (1) 11 x 17 inches page will count as two (2) 8.5 x 11 inches pages. Pages that include the cover letter, table of contents, section dividers, resumes, financials, and required forms do not count towards the total page count. Resumes for each key team member shall be limited to no more than two (2) pages. The font shall be no smaller than 11 point.

The time and date of receipt of the SOQ will be indicated on the sealed envelope by the Owner. Timely submission is the sole responsibility of the Respondent. Responses received after the specified time will not be considered.

The SOQ must be typed or neatly printed. The information presented should be clear, complete, concise and not misleading. All attachments submitted shall be identified with the name of the Respondent. Failure to submit a response on the official submittal forms provided in the RFQ for that purpose may be considered just cause for rejection of the response. Modification of any portion of the RFQ may be cause for rejection of the response. The Owner reserves the right to decide, on a case-by-case basis, at its sole discretion, whether to reject a Respondent's submittal, or to cancel the RFQ process at any time.

Section 6 SOQ Evaluation and Selection

6.1 Section Process Schedule

The following is the anticipated schedule for the CMAR selection process. The City reserves the right to change the schedule by addendum.

City of Greensboro Issues RFQ	September 17, 2024
Pre-Submittal Meeting	October 2, 2024 at 10:00 am
Completed SOQs due to City	October 23, 2024 at 12:00 pm
City review of SOQs	October 23- October 31, 2024
Optional Interviews	November 14, 2024
City selects most qualified CMAR	November 14, 2024
Submittal of Pre-Construction scope and fee by selected CMAR (Phase 1)	November 26, 2024
Council Approval	January 2025
Contract Award	February 2025

6.2 Evaluation

All SOQs will be evaluated by the Owner's Evaluation Panel (Panel). The Engineers may advise the Panel, but the Engineers will not serve as a member of the Panel. The Panel will be comprised of City professional staff members to include, but not necessarily limited to, representatives from the following areas:

- Water Resources Assistant Director
- Water Resources Department Water Supply Division (3)
- Water Resources Department Engineering Division (3)
- Engineering and Inspections Department
- M/WBE Office

Please do not contact any member of the Panel, any elected officials nor any employee of the City of Greensboro regarding the project. Any attempt to do so will result in disqualifications of the firm's submittal for consideration. All questions shall be directed to the Owner Contact indicated in Section 4 of this RFQ. The Panel reserves the right to waive any and all irregularities or informalities in the submittal, reject any and all submittals, and to accept the submittals most favorable to the Owner. The CMAR services section is qualification based, with a scope and fee for Pre-Construction services to be negotiated following selection. In evaluating each SOQ, the Owner will consider, by way of illustration and not limitation, the criteria included in this section.

6.3 Responsiveness / Minimum Qualification Requirements – Non-Point Rating Items

An unsatisfactory rating on any item in the category titled "non-point rating items" will be considered sufficient cause to reject the Respondent's submittal. The following are non-point rating criteria:

1. **Responsiveness to RFQ** – Only responsive SOQs will be considered and evaluated. A responsive SOQ must be completed according to the instructions, include all required attachments and requested information and be comprised of, but not limited to, the following:
 - Attachment B: Cover Page. This form must be filled out and presented in the Respondent's submittal; it does not count towards the page limitation.

- Attachment C: Respondent Information. This form must be filled out and presented in the Respondent's submittal; it does not count towards the page limitation.
 - Attachment D: Details of Past Projects. This form must be filled out and presented in the Respondent's submittal; it does not count towards the page limitation.
 - Attachment E: Respondent Affidavit. This form must be filled out and presented in the Respondent's submittal; it does not count towards the page limitation.
 - All required M/WBE items listed in Attachment C, Item B #5.
 - All additional information as needed to provide a complete response to the RFQ.
2. **Debarment Status** – By submitting an SOQ, the contractor certifies that neither it nor any affiliated entity is currently debarred from submitting bids or has otherwise agreed not to submit bids on contracts with any government or business entity. If the contractor experiences a material change in its debarment status after the SOQ is submitted and prior to the award of the contract for the Project, the contractor shall notify the Owner of the change in writing at the time the change occurs or as soon thereafter as is reasonably practicable. If at any time during the evaluation process the contractor is debarred as described above, it will be considered grounds to reject the contractor's submittal.
 3. **Contractor's License** – The contractor must provide a copy of their valid unlimited North Carolina Contractors License, or provide a statement indicating that they are able to acquire one in a timely fashion consistent with the Project's schedule.
 4. **Bonding Capacity/Statement** – Contractors must provide a signed statement from its Surety stating that, based on present circumstances, the Surety will be willing to provide performance and payment bonds for the contractor in connection with the Project.
 5. **Financial Data** – Data will be reviewed for financial soundness.
 6. **Claims / Final Resolution / Judgments** – Evaluation of this data will be based on the number of affirmative answers to the questions and the details provided in explanation for each occurrence.
 7. **Failure to Complete – Applicant / Partner / Officer** – Evaluation of the contractor's, contractor's partners, and/or officers' failure to complete projects will be primarily based on the number of occurrences and the explanations for the failure to complete in conjunction with the references on those projects.

6.4 Comparative Evaluation Criteria – Point Rating Items

All SOQs that pass the non-point rating evaluation will be evaluated by the Owner's Evaluation Panel in accordance with the Point-Rating System identified in Attachment "A", Item B. Based on the Point Rating System, the Panel plans to select the CMAR. The City reserves the right to conduct interviews if deemed necessary. In considering a contractor's points rating, the Panel shall be the sole judge of the financial soundness, history of satisfactory project performance, whether or not the contractor possesses a sufficient number of experienced qualified personnel at its management and supervisory level and has demonstrated a commitment on its projects to accommodating changes and disruptions in the work, all of which indicate the ability to successfully complete the Project at a reasonable cost to the Owner in accordance with the Project's schedule.

1. **Project Performance / References** – During evaluation of project performance, emphasis will be placed on past performance on projects of a similar size, nature, and scope to this Project, including contractor's ability to meet scheduled completion dates and project budgets. Contractor shall demonstrate ability to adhere to project schedule.

The minimum experience requirement in order to be considered is successful completion in the last fifteen (15) years of at least five (5) similar water/wastewater treatment plant projects constructed.

At least two (2) of these projects must have been delivered using an alternative delivery method (Design-Build (DB) or CMAR). At least two (2) of these project must have been a drinking water treatment plant.

The Owner intends to contact references listed in the contractor's SOQ regarding the point-rating items B.1, B.3, B.4, B.6 and B.7 listed on the Owner's Evaluation Form, and may contact other potential references if referred to them in the course of this evaluation. The Owner reserves the right to contact any party it deems appropriate and by submitting an SOQ, the contractor releases the Owner and any references from all liability concerning this exchange of information. Contractors should ensure that the reference information provided is current. Letters of reference shall NOT be included in the contractor's SOQ, since such letters do not follow a standard objective format.

2. **Alternative Project Delivery Approach / Innovative Ideas** – Evaluation of alternative project delivery approach will place emphasis on the contractor's level of experience, approach and success using alternative project delivery methods. Preference will be given to contractors who have demonstrated significant experience, ingenuity, transparency, and collaborative approaches using CMAR or Design-Build project delivery methodologies. Contractor to describe their overall project specific delivery approach including, but not limited to schedule, cost estimating and value engineering. Innovative ideas (i.e. ideas to accelerate the overall project duration and/or identify key risks that may impact the overall project duration, etc.) on the project delivery approach will also be evaluated.
3. **Personnel Qualifications / Experience / Availability** – The potential project manager(s) and superintendent(s) must have experience on projects of similar size, nature, and scope. The qualifications of other key personnel the contractor would like to provide will also be considered in this evaluation. Contractor shall provide availability of key personnel.

Please provide availability of key team members for the duration of this project.

4. **Safety Performance** – Safety data will be reviewed and compared to current OSHA and insurance industry standards.
5. **Minority / Women Business Enterprise** – Respondent will receive up to ten (10) evaluation points for M/WBE Participation. Of the 10 points, up to five points will be awarded for utilizing certified MBE firms and up to five points for using certified WBE firms. The distribution will be as follows: the respondent with the highest level of participation receives the maximum 5 points, and the lowest participation level receives the fewest points. All subcontractors, service providers, and/or suppliers shall be reported on Affidavit C, Subcontractor Utilization Commitment Form.
6. **Local Preference** – Respondent shall state if the firm has a local presence. The Local Area is defined as the corporate limits (i.e., legal geographic boundaries) of the municipalities which comprise the Guilford County Economic Development Alliance (Greensboro, NC; High Point, NC; and Guilford County, NC) ("Local Area"). A proposer has a Significant Business Presence in the Local Area, if it is headquartered in the Local Area for at least one year or it has at least 25% of its total full-time, part-time and contract employees regularly based in the Local Area for at least one year or generates at least \$500,000 in gross sales (dollars received) in the Local Area within the twelve months preceding the City's Request for Qualifications for that specific contract. Notwithstanding any of the above, a location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a Significant Business Presence.

Section 7 Conditions for Respondents

7.1 Minority and Women Participation

The City's policy is to maximize Respondents use of minority and women-owned businesses as

partners and/or subcontractors.

To encourage M/WBE participation in the contract, the City will award ten percent (10%), or ten points, of the total available selection criteria Points to a Respondent on a sliding scale based upon the level of M/WBE participation on its team performing a Commercially Useful Function. Of the 10 points, up to five points will be awarded for utilizing certified MBE firms and up to five points for using certified WBE firms. The distribution will be as follows: the respondent with the highest level of participation receives the maximum 5 points, and the lowest participation level receives the fewest points. If a Respondent subcontracts any portion of the contract to subcontractors, service providers and/or suppliers, the information shall be reported on Affidavit C, Subcontractor Utilization Commitment Form.

The City's Goal Setting Committee will establish MBE/WBE goals for Phase 2 (Construction). Prior to the solicitation of first-tier subcontractors, the selected construction manager-at-risk must submit a utilization plan to the City for approval, stating its efforts to meet the M/WBE goals. The construction manager at risk and first-tier subcontractors shall make reasonable faith efforts.

For purposes of Certification, the City accepts minority and women owned firms that are certified by one of the following:

1) State of North Carolina Department of Administration Historically Underutilized Business Office (HUB) <https://ncadmin.nc.gov/businesses/hub/hub-certification>

OR

2) NC DOT North Carolina Department of Transportation
<https://connect.ncdot.gov/business/SmallBusiness/Pages/Become%20a%20Certified%20DBE%20Business.aspx>

AND satisfies the City's eligibility requirements.

For questions regarding compliance with these requirements, please contact Monica Jarrett in writing at monica.jarrett@greensboro-nc.gov .

7.2 Procurement Law

Prequalification and bidding procedures will be governed by, and administered in accordance with, applicable law in the jurisdiction of North Carolina.

7.3 Addenda and Interpretations

All requests for interpretation of the RFQ and the associated attachments must be made in writing to Owner. Requests can be made by email at: Monica.Jarrett@greensboro-nc.gov and Copy Kip.Kalisiak@hdrinc.com and should reference "Mitchell WTP 2024 Residuals and EC CMAR". To be given consideration, such requests must be received not later than ten (10) days prior to the date fixed for the submittal of the SOQ. Any and all such interpretations and any supplemental instructions or changes to the RFQ will be in the form of written addenda which, if issued, will be sent to all prospective contractors at the addresses furnished for such purposes, not later than five (5) days prior to the date fixed for submittal of the SOQ. Failure of any contractor to receive any such addenda shall not relieve such contractor from any obligation under its SOQ as submitted. All addenda issued shall become part of the RFQ and receipt thereof must be signed by all contractors and returned to the Owner with the submitted SOQ.

7.4 Notice of Substantial Changes

If the Respondent experiences a material change in its debarment status, financial condition, corporate structure or personnel after the SOQ is submitted and prior to the award of the contract for the Project, the Respondent shall notify the Owner of the change in writing at the time the change occurs or soon thereafter.

Failure to notify the Owner of any material change in the Respondent's debarment status, financial condition, corporate structure or personnel may constitute grounds for rescinding an "invitation to propose" or for rejection of the related proposal.

7.5 Misrepresentation

If any Respondent knowingly makes a misrepresentation in submitting information to the Owner, or fails to provide all required information, or provides information that is misleading, such misrepresentation, omission or misleading information will be sufficient grounds to reject the Respondent's submittal, to rescind a previously issued invitation to propose, or for rejection of a proposal submitted as a result of this selection process.

7.6 Collusion Among Contractors

More than one response from an individual, firm, partnership, corporation, or association under the same or different name will be rejected. Any or all responses will be rejected if there is any reason for believing that collusion exists among the contractors. Participants in such collusion will not be considered in future RFQs / RFPs for the same work. Each Respondent, by submitting a response, certifies that they are not a party to any collusive action or to any action that is otherwise unlawful.

7.7 Confidential / Proprietary Information

The Respondent should give specific attention to the identification of those portions of their SOQ which they deem to be confidential, proprietary information or trade secrets, and provide any justification of why such materials, upon request, should not be disclosed by the Owner under North Carolina public records laws. The Respondent must clearly indicate each and every section that is deemed confidential, proprietary or a trade secret as required by statute. The Respondent may NOT preface their entire SOQ with a proprietary statement.

If the Owner determines that a document that the Respondent has designated "confidential" or "trade secret" is not entitled to protection from public disclosure, the Owner will provide notice of that determination to the contact person designated by the Respondent, in any reasonable manner that the Owner can provide such notice, at least five (5) business days prior to its public disclosure of the document. If the Respondent does not designate anyone to receive such notice, the Owner will not have any obligation to provide any notice of a determination of non- confidentiality. If the Respondent does not designate anyone to receive such notice, or if, within five (5) business days after the designated person receives such notice, the Respondent does not initiate judicial proceedings to protect the confidentiality of the document, the Owner will not have any obligation to withhold the document from public disclosure.

By submitting to the Owner a document that the Respondent designates as "confidential" or "trade secret", the Respondent agrees that in the event a third party brings any action against the Owner or any of its officials or employees to obtain disclosure of the document, the Respondent will indemnify and hold harmless the Owner and each organization's affected officials and employees from all costs, including

attorney's fees incurred by or assessed against any defendant, of defending against such action. The Respondent also agrees that at the Owner's request the Respondent will intervene in any such action and assume all responsibility for defending against it, and that the Respondent's failure to do so will relieve the Owner of all further obligations to protect the confidentiality of the document. All materials and information submitted during the RFQ process will become the property of the Owner and will not be returned to the Respondent, except for the financial information, which shall be returned upon request after the Owner's CMAR has been selected.

7.8 Bonding and Insurance

Insurance Requirements: Any contract entered into as a result of this Request will require the Respondent (Consultant(s) selected for the contract) to obtain and maintain certain minimum insurance coverage. Without limiting any liabilities or other obligations of Respondents, successful Respondents performing as independent Contractors hereunder, shall be fully responsible for providing Worker's Compensation, General Liability, Professional Liability, and Automotive Liability coverages. The successful Respondent(s), if any, must provide a Certificate of Insurance within fifteen (15) calendar days after notification of award. Certification must include: name and address of insurance company (must be authorized to conduct business in North Carolina or be named on the List of Authorized Insurance maintained by the NC Department of Insurance), policy number, list the City of Greensboro as an additional insured, and state liability coverage and amounts.

Bonding and Insurance: The CMAR shall provide bonding and insurance in accordance with the Contract. The City will require the apparent successful Respondent to provide proof of the required insurance coverage before entering into a contract. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the City shall be in form and substance acceptable to the City.

Builder's Risk/Fire and Casualty Insurance: The CMAR shall have the ability to obtain appropriate insurance protection for the project during construction to be considered for Phase 2, Construction.

**ATTACHMENT A
OWNER'S EVALUATION FORM**

(This form is for Owner's Evaluation Panel use only – not for completion by Respondent)

Respondent Name/NC License No.: _____

A. NON-POINT RATING ITEMS

<u>CATEGORY</u>	<u>SATISFACTORY</u>	<u>UNSATISFACTORY</u>
1. Responsiveness to RFQ	_____	_____
2. Debarment Status	_____	_____
3. Contractor's License	_____	_____
4. Bonding Capacity/Statement	_____	_____
5. Financial Data	_____	_____
6. Claims/Final Resolution/Judgement	_____	_____
7. Failure to Complete – Applicant/Partner/Officer	_____	_____

B. POINT-RATING ITEMS

	WEIGHT	GRADE	(WEIGHT X GRADE)
		(0 – 10)	TOTAL
1. Project Performance/References	2.0	_____	_____
2. Alternative Project Delivery Approach/Innovative Ideas	3.0	_____	_____
3. Personnel Qualifications/Experience /Availability	3.0	_____	_____
4. Safety Performance	0.5	_____	_____
5. M/WBE Participation			
MBE Participation	0.5	_____	_____
WBE Participation	0.5	_____	_____
6. Local Preference	0.5	_____	_____

TOTAL SCORE: _____
Max Score 100

GRADING SCALE

0 = Unfavorable, 2 = Questionable, 4 = Below Average, 6 = Average, 8 = Above Average, 10 = Most Favorable

ATTACHMENT B
COVER PAGE

A copy of this page shall be the cover page for the Statement of Qualifications. A set of attachments and any additional information should be included with each copy of the SOQ submittal.

1. Contractor (CMAR) Name: _____

Provide all names under which the contractor does business:

Is the contractor related to another firm as a parent, subsidiary, or affiliate? Yes ___ No ___

If yes, attach names and addresses for all affiliated, parent and/or subsidiary companies, and state the nature of each affiliation.

2. Address: _____

3. Tax Identification Number (EIN/SSN): _____

4. Is contractor a corporation? Yes _____, No _____

If yes, what is the State of incorporation? _____

5. If not incorporated, specify method and date of organization: _____

If a partnership, attach partnership details (such as partner's names and individual contact information for each partner). If a Joint Venture (JV), attach the JV agreement and provide details of the intended role of each JV member, including appropriate additional attachments (at a minimum submit an Attachment C for each JV member).

6. Initial if: Minority Owned: _____, Women Owned: _____, Neither: _____.

If so, provide, as attachment, any governmental certifications thereof.

7. Specify the portions of the Work, that the contractor expects to subcontract for Phase 1:

8. Provide contact information including name, title, phone number and email address of the person who can respond authoritatively to any questions regarding this response:

Signed by: _____

Printed name and title: _____

**ATTACHMENT C
RESPONDENT INFORMATION**

A. NON-POINT RATING ITEMS

1. **Responsiveness to RFQ** – Responsiveness is defined in the RFQ section titled Evaluation.
2. **Debarment Status** – Has the contractor, or any affiliate, ever been the subject of any of the following actions:
 - a. Debarment..... Yes No
 - b. Deletion from a Prequalified Bidders List..... Yes No
 - c. Other action which resembles debarmentYes No

If yes, provide details on a separate sheet for each instance.

3. **Contractor's License** – Attach a copy of the Contractor's valid North Carolina Contractors License, or attach a statement about Contractor's ability to acquire one in a timely fashion consistent with the Project's schedule.
4. **Bonding Capacity/Statement** – Attach a signed statement from Contractor's Surety stating that, based on present circumstances, the Surety will be willing to provide performance and payment bonds for the contractor in connection with the Project.

Total bonding capacity \$ _____

Available bonding capacity \$ _____

5. **Financial Data**
 - a. Submit your organization's most recent audited financial statements for a 3-year period. Complete balance sheets and income statements must be included. The statements shall be enclosed in a separate sealed envelope and included in the Statement of Qualifications package. Data provided for parent or child entities related to the contractor firm in lieu of the contractor's data shall not be reviewed and shall be considered non-responsive.
 - b. Has the contractor, or any affiliate, ever been denied bonding or had bonding revoked? Yes No

If yes, provide details on a separate sheet for each instance.

6. **Claims/Final Resolution/Judgments** – Have any of the following actions occurred on, or in conjunction with, any project performed by the contractor, any affiliate, or their officers, partners or directors in the last five (5) years?
 - a. Legal Action Implemented by Contractor against Owner..... Yes No
 - b. Legal Action Implemented by Contractor against Subcontractor..... Yes No
 - c. Legal Action Implemented by Owner Yes No
 - d. Legal Action Implemented by Subcontractor..... Yes No
 - e. Settlement or Close Out Agreement in effect with Owner..... Yes No
 - f. Judgments..... Yes No
 - g. Arbitrations Yes No

If the answer to any of items a. through g. above is yes, provide details on a separate sheet for each instance.

ATTACHMENT C

(Cont'd)

7. Failure to Complete – Contractor /Partner/Officer

– Has your organization ever failed to complete any work awarded to it? This includes termination for the convenience of the Owner or any other reason for failing to complete a project. Yes _____ No _____

If yes, provide details on a separate sheet for each instance.

– Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a construction contract or failed to complete a construction contract handled in his or her own name? This includes termination for the convenience of the Owner or any other reason for failing to complete a project.

Yes _____ No _____

If yes, provide details on a separate sheet for each instance.

B. POINT RATING ITEMS

1. Project Performance / References

Using a separate copy of Attachment D for each project, provide details of five (5) projects completed within the last fifteen (15) years that are most similar in size, nature, and scope to the Mitchell WTP Improvements 2024 project. Include the following data: project name, Owner, Owner contact information, Engineer and/or construction manager, completion date, description of each work package performed by the contractor, original and final contract value for each work package (trade), total project cost, and project delivery method.

Reference information is also addressed on Attachment D.

2. Alternative Project Delivery Approach / Innovative Ideas

Within the project description for each project submitted for evaluation of project performance (Item B.1 above), provide details of the alternative project delivery method used (if applicable to the project); the contractor's level of participation in the design development, preparation of progressive construction estimates, and value engineering reviews/recommendations; if the approach included development of a Guaranteed Maximum Price proposal using open-book pricing; if subcontractor pre-qualification and work package bidding was administered by the contractor; if the contractor was required to submit competitive bids for work packages the contractor intended to self-perform; and any other additional information related to the contractor's alternative project delivery approach for the project.

Also provide an innovative ideas that have been used on past projects and/or that you think could benefit this project.

ATTACHMENT

C

(Cont'd)

3. **Personnel Qualifications/Experience/Availability** – Submit a copy of the contractor's corporate organizational chart. Provide the total quantity of company employees as well as the quantity of employees identified by discipline. Provide proposed project organizational chart and attach resumes of key personnel. Emphasize years of construction experience, last employer, last position, and experience on similar projects. Please also provide availability of key personnel.

4. **Safety Performance** – On a separate sheet provide the following:
 - a. Experience Modification Rating (EMR) with 3-year and 5-year trends
 - b. Lost Time Ratio (TRIR) with 3-year and 5-year trends
 - c. Accident Frequency Rate with 3-year and 5-year trends
 - d. A list of OSHA citations levied during the past five (5) years. Describe the infractions and indicate whether there was a warning or fine imposed and the dollar amount of each.
 - e. Details from your organization's OSHA 300A log for the past five (5) years indicating:
 - Number of lost workday cases
 - Number of restricted workday cases
 - Number of cases with medical attention only
 - Number of fatalities

5. **M/WBE Participation** – Provide Affidavit C, found in Attachment F. The CMAR may count both 1st and 2nd tier subcontractors for the services; however, percentages shall be identified by tier (e.g., 25% total M/WBE commitment, 15% tier 1 (MBE) and 10% tier 2 (WBE)). All Subcontractors/Team Members performing services on the project must provide a commercially useful function on the project. (Definition of Commercially Useful Function may be found in Attachment F).

6. **Local Preference** – Does your organization meet the definition of local presence?
Yes _____ No _____

If yes, please describe how:

ATTACHMENT D

DETAILS OF PAST PROJECTS

(Use a separate copy of this form for each project)

1. Contractor Name: _____
If contractor's Name is not the same, state relationship (i.e. parent company, subsidiary, JV etc.): _____
Project Manager: _____
Superintendent: _____

2. Project Name: _____
Facility Name: _____
Project Location: _____

Contract # _____ Project # _____

3. Owner: _____
Address: _____

Contact Person: _____
Contact Title & Phone # _____ () _____
Contact Person Email: _____

4. Engineer: _____
Address: _____

Contact Person: _____
Contact Title & Phone # _____ () _____

5. Construction Manager (if any): _____
Address: _____

Contact Person: _____
Contact Title & Phone # _____ () _____

ATTACHMENT D
(Cont'd)

6. Contract Dates (completion dates should reflect substantial completion)

Notice to Proceed: _____

Contractual Completion: _____

Actual Completion: _____

7. Description of Project:

(Include Project Delivery Method Used – Design, Bid, Build (DBB); Design – Build (DB), Construction Manager At- Risk (CMAR), or other (describe)). Use additional attachment if necessary.

8. Original Contract Value: \$ _____

9. Final Contract Value: \$ _____

10. Final Subcontract Value: \$ _____

11. Total % of GC and OH&P: \$ _____

12. Value of Change Orders: \$ _____

13. Outstanding Claims (if any): \$ _____

14. Owner Budget (if known): \$ _____

15. Bonding Company: _____

Address: _____

Contact Person: _____

Contact Title & Phone # _____

16. Work Packages (Trade) Self-Performed (Use additional attachments if necessary):

a. Work Performed: _____

Work Package Contract Value: \$ _____

ATTACHMENT D
(Cont'd)

b. Work Performed: _____

Work Package Contract Value: \$ _____

c. Work Performed: _____

Work Package Contract Value: \$ _____

d. Work Performed: _____

Work Package Contract Value: \$ _____

e. Work Performed: _____

Work Package Contract Value: \$ _____

17. List the five (5) largest subcontracts on this project.

a. Subcontractor Name: _____
Trade: _____ Subcontract Value: _____
Work Performed: _____

Address: _____

Contact Person: _____

Contact Title & Phone # _____ () _____

ATTACHMENT D
(Cont'd)

b. Subcontractor Name: _____
Trade : _____ Subcontract Value: _____
Work Performed: _____

Address: _____

Contact Person: _____
Contact Title & Phone # _____ () _____

c. Subcontractor Name: _____
Trade : _____ Subcontract Value: _____
Work Performed: _____

Address: _____

Contact Person: _____
Contact Title & Phone # _____ () _____

d. Subcontractor Name: _____
Trade: _____ Subcontract Value: _____
Work Performed: _____

Address: _____

Contact Person: _____
Contact Title & Phone # _____ () _____

ATTACHMENT D
(Cont'd)

e. Subcontractor Name: _____
Trade: _____ Subcontract Value: _____
Work Performed: _____

Address: _____

Contact Person: _____
Contact Title & Phone # _____ () _____

18. M/WBE Participation

M/WBE participation should be presented as a percentage of the total contract amount for Pre-Construction and Construction contracts. .

Preconstruction:

- The M/WBE **goals** set on the project
 - MBE _____
 - WBE _____
- **Actual** M/WBE participation
 - MBE _____
 - WBE _____

Construction:

- The M/WBE **goals** set on the project
 - MBE _____
 - WBE _____
- **Actual** M/WBE participation
 - MBE _____
 - WBE _____

ATTACHMENT E RESPONDENT AFFIDAVIT

The undersigned hereby attests under penalty of perjury and by personal knowledge to the following:

1. The contents of the Statement of Qualifications (including all submitted attachments and other documentation) are true, correct and not misleading.
2. To the best of my knowledge neither the Respondent, nor its agents, affiliates, partners, employees, officers, directors or other associates of any kind, have colluded with any individual or entity on behalf of the Respondent, or themselves, to produce an unfair advantage over others or to gain favoritism in the award of any contract resulting from this RFQ.
3. By responding to this RFQ and submitting the Statement of Qualifications, the Respondent agrees to indemnify and hold harmless all parties to this RFQ, including, but not limited to, the Owner for any conceivable damages arising therefrom; and affirms that no compensation is expected as a result of the preparation of said response.
4. In preparing its response on this project, the Respondent has considered all proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in "discrimination" as defined in the City's M/WBE Program Plan.

M/WBE Commercial Nondiscrimination Policy

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

In preparing its response, the Respondent has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in the City's M/WBE Program Plan, Section V. A. 1.; to wit: discrimination in the solicitation, selection or commercial treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the response submitted by the Respondent on this project, and terminate any contract awarded based on the response. As part of its response, the Respondent shall provide to the City a list of all instances within the immediate past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of North Carolina that the Respondent discriminated against its subcontractors, vendors, suppliers or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the City, the Respondent agrees to comply with the City's Commercial Nondiscrimination Policy as described under its M/WBE Program Plan, Section V. A.1.

ATTACHMENT E
(Cont'd)

Contractor Name: _____

Officer's Signature: _____

Printed name and title: _____

Telephone No: _____

Affix Corporate Seal

Witnessed by: _____

Witness printed name and title: _____

Date Signed: _____

ATTACHMENT F

Minority and Women Business Enterprise (M/WBE) Program Definitions, Vendor Responsibilities and Affidavits

DEFINITIONS

Certification – the process by which the M/WBE Office determines a firm to be a bona-fide minority or women-owned business enterprise. A firm may apply for multiple Certifications that cover each status category (e.g., MBE or WBE) for which it is able to satisfy eligibility standards. The M/WBE staff may contract these certification services to a State, regional Certification agency or other entity that agrees to abide by the City's standards and criteria for certification. For purposes of Certification, the City accepts any firm that is certified by the State of North Carolina Secretary of Administration, local government entities, and other organizations identified herein that have been determined by the City Manager or his designee to have adopted Certification standards and procedures similar to those followed by the M/WBE Program, provided the prospective firm satisfies the eligibility requirements set forth in this Program Plan.

City – refers to the City of Greensboro, NC.

Commercially Useful Function – an M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful M/WBE participation, when in similar transactions in which M/WBE firms do not participate, there is no such role performed.

Diversity Management System (DMS) – a mandatory electronic system wherein the City requires all Prime and Subcontractors that are awarded contracts by the City to register online on the City website. The DMS system assigns a unique identifier to each registrant that is then required for receiving payments from the City.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Evaluation Preference – A Program Element that may be applied to Construction, Professional Services, Goods and Other Services contracts that are to be awarded on a basis that includes factors other than lowest price (i.e., Best Value Contracting), and wherein responses that are submitted to the City by M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents or Bidder / Participants.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed by the City Manager or designee and chaired by the M/WBE Coordinator or designee that includes, at a minimum, the M/WBE Coordinator or designee, and /or the Director of Financial and Administrative Services, and / or the Director of Engineering and Inspections or their designees, and the Director or designee of the Originating

Department (assuming the Originating Department is neither the Financial and Administrative Services Department nor the Engineering and Inspections Department) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the M/WBE Coordinating Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes M/WBE Program Goals for the City of Greensboro (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Program Elements are to be applied to specific contracts based upon various criteria.

Industry Categories – procurement groupings for the City of Greensboro inclusive of Construction, Professional Services, Goods and Other Services (i.e., manufacturing, wholesale and retail distribution of commodities and non-professional services). This term may sometimes be referred to as “business categories.”

Joint Venture Incentives – a Program Element that provides inducements for non-M/WBE firms to collaborate with M/WBE partners in response to solicitations and in performing a Prime Contract to supply construction services on behalf of the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this Program Element may include Evaluation Preferences that are tied to the percentage of M/WBE participation in the joint venture, expedited issuance of building permits, and extra contract option years in certain construction maintenance contracts.

Manufacturer - a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications

Minority/Women Business Enterprise (M/WBE) – any firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more of the identified Minority Group Members and/or non-minority women as indicated herein.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City of Greensboro. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Program Plan is a minority male or female-owned business.

Minority Group Members - African-Americans, Hispanic Americans, Asian Americans, and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands regardless of race.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes of North America as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

M/WBE Program – the combination of race- and gender-neutral and race- and gender-conscious remedies, policies, procurement reforms, and Program Elements that are provided herein for the purpose of enhancing the ability of M/WBE firms to fairly compete for City contract opportunities, and for the purpose of establishing a broader marketplace environment that is less susceptible to the ongoing effects of discrimination.

M/WBE Subcontracting Program – a Program Element in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions.

When specified by the GSC that contract-by-contract goals are not feasible to be set at the time of the solicitation, GSC shall establish goals as the project progresses.

M/WBE Evaluation Preference – a Program Element that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction Manager, Construction Manager at Risk, and Professional Services contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms.

Originating Department – the City department or authorized representative of the City which issues a solicitation, or for which a solicitation is issued on behalf of, for its purchase of goods or services.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for the degree of M/WBE participation of a Respondent team as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of Greensboro for purposes of providing goods or services for the City.

Regular Dealer - a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Relevant Market – for purposes of the Disparity Study, the Relevant Market encompasses the geographical area where the City awards at least 75% of its dollars. The Disparity Study finding of the Relevant Market, which is also used by the City to determine eligibility for participation under various Program Elements established by this Program Plan is defined as the North Central North Carolina Counties, currently including the counties of Alamance, Caswell, Chatham, Davie, Davidson, Durham,

Forsyth, Franklin, Granville, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stokes, Surry, Vance, Wake, Warren, and Yadkin.

Respondent – a vendor or Bidder / Participant submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

Responsible – a firm, which is capable in all respects to fully, perform the contract requirements and has the integrity and reliability, which will assure good faith performance of contract specifications.

Responsive – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with M/WBE Program requirements.

Significant Business Presence – to qualify for this Program, an M/WBE firm must be headquartered or have a *significant business presence* for at least one year within the Relevant Market, defined as: an established place of business in one or more of the counties that make up the Greensboro Relevant Market, and from which at least 25% of its total full-time, part-time and contract employees are regularly based, and from which a substantial role in the M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Segmented M/WBE Goals – MBE and WBE goals shall be separately applied and, the M/WBE Program Office may, at its discretion apply MBE goals as a segmented goal, by ethnicities. The application of Segmented M/WBE Goals is intended to ensure that those segments (MBE and WBE) of M/WBEs have been most significantly underutilized receive a measure of remedial assistance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A subcontractor may be either a first, second, or third-tier subcontractor. A first- tier subcontractor provides good or services directly to the Prime Contractor. A second-tier contractor is hired by a first- tier subcontractor within the same contract or purchase order to provide a portion of the good and/or services the first-tier subcontractor is obligated to provide under its subcontract to the Prime Contractor. The second-tier subcontractor within the same contract or purchase order to provide a portion of the goods and/or services it is obligated to provide under its subcontract with the first-tier subcontractor hires a third-tier subcontractor. A copy of the binding agreement between the Prime Contractor and all of the Subcontractors shall be submitted prior to contract execution by the City and issuance of a Notice to Proceed.

Utilization Documentation – a binding part of the contract, which includes the name of all Subcontractors to be utilized in the contract, specifying the M/WBE Certification category for each, as approved by the M/WBE Coordinator. Additions, deletions or modifications of the utilization amounts or substitutions or deletions of M/WBE Subcontractors require an amendment to be approved by the M/WBE Coordinator or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of this Program Plan as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority female Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Program Plan is not inclusive of MBEs.

VENDOR RESPONSIBILITIES

1. Permit the M/WBE Office to inspect any relevant matter, including records and the jobsite, and to interview Subcontractors and workers (field compliance).
2. Submit accurate progress payment information monthly for each of its Subcontractors, including M/WBE Subcontractors. Report payments to subcontractors on a monthly basis in the City's Diversity Management System (DMS).
3. Ensure that all Subcontractors are paid any undisputed amount to which the Subcontractor is entitled within 10 calendar days of receiving a progress or final payment from the City and otherwise comply with City's contract terms and conditions which sets forth the obligations of the Prime Contractor and Subcontractors and the remedies for delinquency or nonpayment of undisputed amounts.
4. Notify the City in writing of any changes to their utilization and/or subcontracting plan. The M/WBE Office must approve all changes (substitution and/or termination) in advance and in writing.
5. Amendment for unforeseen circumstances:
 - If at any time after submission of a solicitation response and before execution of a contract, the apparent successful Respondent determines that a certified M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful Respondent shall immediately notify the M/WBE Office.
 - Any desired change in the M/WBE participation schedule shall be approved in advance by the M/WBE Office and shall indicate the Prime Contractor's Good Faith Efforts to substitute another certified M/WBE Subcontractor (as appropriate) to perform the work.
 - The M/WBE Office must approve any desired changes (including substitutions or termination and self-performance) in writing in advance.
6. Notify the Originating Department and M/WBE Office of any changes, transfers, or re-assignment of contract with the City.
7. Retain a record of all subcontractor payments for a minimum of four years following projection termination date.
8. Provide a copy of the binding agreement between the Prime Contractor and the Subcontractor to the Originating Department prior to contract execution by the City and issuance of a Notice to Proceed.
9. Include language in contracts with all subcontractors requiring the subcontractors to respond to notifications from the City requiring them to report payments from the contractor in the City's Diversity Management System (DMS).

Name of Prime Contractor: _____ Project Name: _____

****Are you a certified M/WBE? _____ Yes _____ No**

The Bidder/Participant must indicate all subcontracts (M/WBE & NON-M/WBE) it intends to utilize as follows:

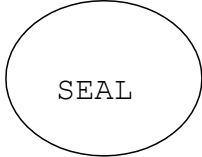
MBE	WBE	NON M/WBE	Subcontractor Name & County**	Nature of Work to be Performed	% Utilization

Total NON-M/WBE Utilization Commitment	
Total MBE Utilization Commitment	
Total WBE Utilization Commitment	

***Only M/WBE firms that are certified by the North Carolina Department of Administration or the North Carolina Department of Transportation and have a significant business presence within the Greensboro Relevant Market Place will be counted towards the M/WBE goal(s).*

(Submit Additional pages, if necessary)

The undersigned will enter into a formal agreement with the M/WBE firm(s) for work listed on this affidavit conditional upon execution of a contract with the City of Greensboro. Breach of this commitment constitutes breach of bidder’s contract if awarded. The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the Bidder in accordance herewith. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.



Date: _____ Name of Authorized Officer: _____
 Signature: _____ Title: _____
 State of _____ County of _____
 Notary Public _____ My commission expires: _____

Affidavit D -1 – **Letter of Intent to Perform as an M/WBE Subcontractor** Contract Number: _____

Name of Prime Contractor: _____ Project Name: _____

The undersigned intends to perform work in connection with the above project as:

	Minority Business Enterprise		Women Business Enterprise
	Individual		A Corporation
	A Partnership		A Joint Venture

The undersigned is certified by the North Carolina Department of Administration or the North Carolina Department of Transportation and is headquartered or has a significant business presence within the Greensboro Relevant Market.

The undersigned is prepared to provide the work (described below) in connection with the above project at the following price: \$_____. Any changes in this commitment must be approved in advance by the M/WBE Office.

_____ % of the dollar value of the subcontract will be sub-let to (if applicable) _____.

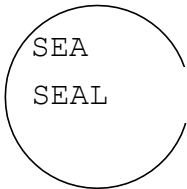
You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Description of the Work	Projected Commencement Date	Projected Completion Date

This document shall not serve in a manner as an actual subcontract between the two parties. A separate binding agreement will describe in detail the contractual obligation of the contractor and the M/WBE subcontractor.

The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with the City of Greensboro. Breach of this commitment constitutes breach of bidder's contract if awarded.

The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the Bidder in accordance herewith. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.



Company Name: _____
Date: _____ Name of Authorized Officer: _____
Signature: _____ Title: _____
State of _____ County of _____
Notary Public _____ My commission expires: _____

Affidavit D-3 – **Letter of Intent to Perform as a 2nd Tier Subcontractor to the Prime Contractor**

Project Name: _____ **Contract Number:** _____

From: _____ **To:** _____

(M/WBE Firm)

(Name of 1st Tier Contractor)

To: _____ and the City of Greensboro.
(Name of Prime Contractor)

The undersigned M/WBE subcontractor intends to perform work in connection with the above project as:

	Minority Business Enterprise		Women Business Enterprise
	Individual		A Corporation
	A Partnership		A Joint Venture

The undersigned M/WBE subcontractor is certified by the North Carolina Department of Administration or the North Carolina Department of Transportation and is headquartered or has a significant business presence within the Greensboro Relevant Market. The undersigned M/WBE subcontractor is prepared to provide the service/product (described below) in connection with the above project at the following price: \$_____. Any changes in this commitment must be approved in advance by the M/WBE Office.

_____ % of the dollar value of the 2nd tier subcontract will be sub-let to (if applicable) _____.

The prime contractor has projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Description of the Work	Projected Commencement Date	Projected Completion Date

This document shall not serve in a manner as an actual subcontract between the parties. A separate binding agreement will describe in detail the contractual obligation of the contractors and the M/WBE subcontractor. The undersigned will enter into a formal agreement for the above work conditioned upon an agreement between the prime contractor and the City of Greensboro. Breach of this commitment constitutes breach of Prime Contractor’s contract if awarded.

The undersigned hereby certifies that he or she has read the terms of this certification and is authorized to bind the firm in accordance herewith. Signature and title of authorized official of the company and the date must be properly executed or this document will be deemed nonresponsive.

Company Name: _____

Date: _____

SEAL Signature: _____ Title: _____

State of: _____ County of: _____

Notary Public: _____ My commission expires: _____

ATTACHMENT G – SAMPLE CONTRACT



Advancing Professional Construction
and Program Management Worldwide

CMAA Document CMAR-1

Standard Form of Agreement Between OWNER AND CONSTRUCTION MANAGER

2013 EDITION

(Construction Manager At-Risk)

(Including revisions as negotiated by the Parties)

This document may be used in connection with CMAA Standard Form of Contract Between Construction Manager and Contractor (CMAA Document CMAR-2), CMAA General Conditions of the Construction Contract (CMAA Document CMAR-3), CMAA Standard Form of Contract Between Owner and Designer (CMAA Document CMAR-4), all being 2013 Editions or other Standard Forms or Agreement Between <Insert CMAR> and Subcontractors as well as appropriate terms and conditions.

CONSULTATION WITH AN ATTORNEY IS RECOMMENDED WHENEVER THIS DOCUMENT IS USED.

AGREEMENT

Made this Click here to enter text. day of Click here to enter text. in the year of Two Thousand and Click here to enter text.

BETWEEN the Owner: City of Greensboro, North Carolina (hereinafter referred to as “the Owner” or “City”)

and the Construction Manager (hereinafter referred to as the “CM” or “CMAR”): <Insert>

For services in connection with the Project known as: Mitchell Water Treatment Plant Residuals and Emerging Contaminants. As further described in Article 2: Phase 1 Scope of the Mitchell Water Treatment Plant Residuals and Emerging Contaminants.

The Owner and CM (“Party or Parties”), in consideration of their mutual covenants herein, agree as set forth below: The Parties have agreed to the following phased approach to the Project –

Phase 1 – Preconstruction, Procurement and Development of GMP Services

Phase 2 – Construction Services as Construction Manager At-Risk

Phase 3 – Post Construction Services as Construction Manager At-Risk

The Phases referenced above are further outlined in Exhibits A, B, and C.

The Construction Management Association of America (CMAA) supports and encourages disputes avoidance through the use of processes that enable issue resolution at the lowest possible level of the parties involved in a construction project.

CMAA recognizes that disputes, and the resolution of disputes, are often a difficult, time-consuming, and disruptive aspect of construction projects.

Participants in construction projects should resolve to avoid litigation by taking advantage of various alternative dispute resolution (ADR) processes to resolve disputes. These include mediation, mini-trial, disputes review board (DRB), partnering, negotiation, and neutral fact-finding.

ADR is a process that relies on consensual, court-annexed, or contractually mandated procedures. ADR processes used for particular projects should be appropriate to each project and its participants, they should be established and consented to by all participants and encouraged by the construction manager.

CMAA believes that lengthy arbitration and litigation should be used only as a last resort in resolution of construction related issues.

SAMPLE CONTRACT

Table of Contents

ARTICLE 1: RELATIONSHIP OF THE PARTIES..... 4

ARTICLE 2: PROJECT DEFINITION 4

ARTICLE 3: CONSTRUCTION MANAGER’S BASIC SERVICES..... 4

ARTICLE 4: DURATION OF THE CONSTRUCTION MANAGER’S SERVICES..... 12

ARTICLE 5: CHANGES 12

ARTICLE 6: OWNER’S RESPONSIBILITIES..... 13

ARTICLE 7: COMPENSATION FOR CM SERVICES AND PAYMENT..... 14

ARTICLE 8: INSURANCE AND MUTUAL INDEMNITY..... 18

ARTICLE 9: TERMINATION AND SUSPENSION 20

ARTICLE 10: DISPUTE RESOLUTION 20

ARTICLE 11: ADDITIONAL PROVISIONS..... 21

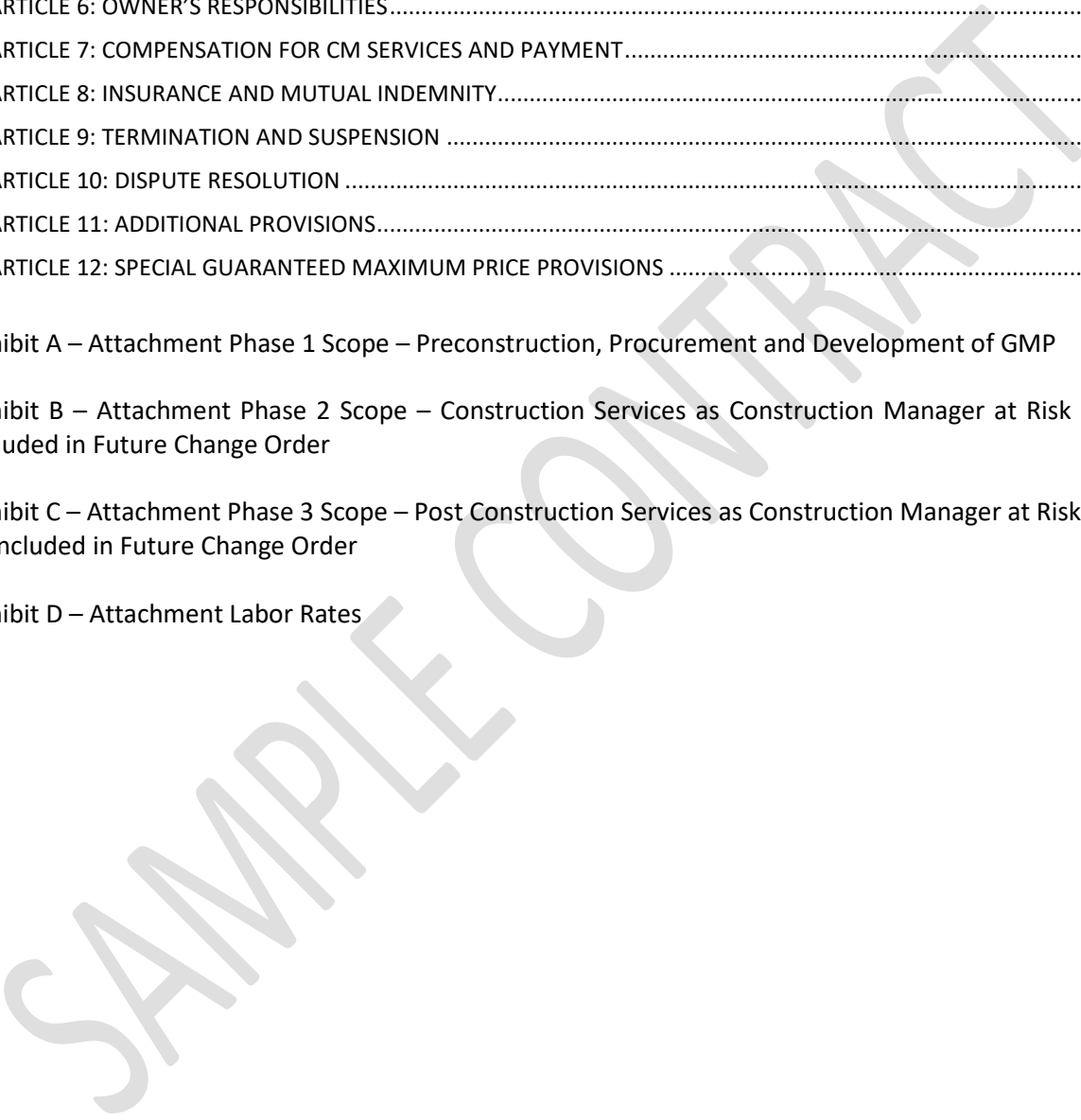
ARTICLE 12: SPECIAL GUARANTEED MAXIMUM PRICE PROVISIONS 22

Exhibit A – Attachment Phase 1 Scope – Preconstruction, Procurement and Development of GMP

Exhibit B – Attachment Phase 2 Scope – Construction Services as Construction Manager at Risk - To be included in Future Change Order

Exhibit C – Attachment Phase 3 Scope – Post Construction Services as Construction Manager at Risk - To be included in Future Change Order

Exhibit D – Attachment Labor Rates



ARTICLE 1: RELATIONSHIP OF THE PARTIES

1.1. Owner and Construction Manager: The CM and the Owner shall perform as stated in this Agreement and each accepts the relationship between them that is established by this Agreement.

1.1.1. Standard of Care: The CM covenants with the Owner to furnish its skill and judgment with due care in accordance with applicable federal, state, and local laws and regulations that are in effect on the date of this Agreement first written above.

1.2. Owner and Designer: The Owner shall contract separately with one or more Designers to provide architectural and engineering design for the Project, agreement(s) to which the CM is not a party.. The Project is defined in Article 2 of this Agreement. This Agreement shall not give the Designer any claim or right of action against the CM and this Agreement shall not create a contractual relationship between any parties except the Owner and the CM.

1.3. Owner and Contractors: The Owner will require the CM to contract directly with such Contractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement.

1.4. Relationship of the CM to the Designer and Other Project Participants: In providing construction management services described in this Agreement, the CM shall endeavor to maintain a working relationship with the Designer. Notwithstanding the foregoing, the Designer shall be solely responsible for the Project design and shall perform in accordance with the Designer agreement with the Owner and nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the CM assumes any of the contractual or customary duties of the Designer or any other persons or parties not specified by this Agreement.

ARTICLE 2: PROJECT DEFINITION

The term "Project" when used in the Agreement shall mean the total construction to be performed under this Agreement. The term "Work" required for the "Project" used in this Agreement shall mean the various parts of total construction to be performed

under this Agreement. The Work and the agreed Phases shall be set forth in Exhibit A, B, and C – amended during the course of the Project as provided in this Agreement.

The Project name and locations are as follows:
Mitchell Water Treatment Plant Residuals and Emerging Contaminants
Mitchell Water Treatment Plant
1041 Battleground Ave
Greensboro, NC 27408

The Project consist of major improvements and upgrades to the treatment plant.

ARTICLE 3: CONSTRUCTION MANAGER'S BASIC SERVICES

3.1. CM Basic Services: The CM shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described in this form agreement. Exhibit A – Phase 1 Scope, Exhibit B – Phase 2 Scope and Exhibit C – Phase 3 Scope shall more specifically set forth CM's Work.

3.2. Pre-Construction Phase

3.2.1. Project Management

3.2.1.1. Construction Management Plan: The CM shall prepare a Construction Management Plan for the Project. In preparing the Construction Management Plan, the CM shall consider the Owner's schedule, budget, and design requirements for the Project. The CM shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall be presented to the Owner for acceptance.

3.2.1.2. Designer Selection: (Not used).

3.2.1.3. Designer Contract Preparation: (Not used).

3.2.1.4. Designer Orientation: (Not used).

3.2.2. Time Management

3.2.2.1. Master Schedule: The CM shall prepare a Master Schedule for the Project for review by Designer and the Owner. The Master Schedule shall specify the

proposed start and finish dates for each project activity and the dates by which certain construction activities must be complete. The CM shall submit the Master Schedule to the Owner for acceptance.

3.2.2.2. Design Phase Milestone Schedule: (Not used).

3.2.2.3. Construction Phase Milestone Schedule: In connection with establishing the Master Schedule, the CM shall prepare a Milestone Schedule for the Construction Phase, which Schedule shall be used in connection with soliciting bids from Contractors and suppliers.

3.2.3. Cost Management

3.2.3.1. Construction Market Survey: (Not used).

3.2.3.2. Project and Construction Budget: Based on the Construction Management Plan and the Construction Market Survey, the CM shall prepare a Project and Construction Budget based on separate divisions of the Work required for the Project. The CM shall submit the Project and Construction Budget to the Owner for acceptance. The Project and Construction Budget shall be revised as directed by the Owner.

3.2.3.3. Cost Analysis: The CM shall analyze and report to the Owner the cost of various design and construction alternatives. As a part of the cost analysis, the CM shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.

3.2.4. Management Information System (MIS)

3.2.4.1. Establishing the Project MIS: The CM shall develop a MIS to establish communication among the Owner, CM, Designer, and Contractors, and other parties on the Project. In developing the MIS, the CM shall interview the Owner's key personnel and others to determine the type of information for reporting, the reporting format, and the desired frequency for distribution of the various reports.

3.2.4.2. Electronic Documents: The Owner and the CM mutually agree that the Owner, CM, Designer and Contractors exchange documents and data in electronic or digital form. Prior to any such exchange, the Owner, CM, Designer, and/or Contractors shall agree in a written protocol governing all exchanges, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or

digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmissions methods and verification procedures; (5) methods for maintaining version control; and (6) privacy and security requirements of the written protocol. The Parties shall bear their own costs as identified in the protocol. .

3.2.4.3. Design Phase Procedures: (Not used).

3.3. Design Phase

3.3.1. Project Management

3.3.1.1. Revisions to the Construction Management Plan: During the Design Phase, the CM shall make the recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.

3.3.1.2. Project Conference: The CM shall conduct a project conference attended by the Designer, the Owner, and others as necessary. During the Project Conference, the CM shall review the Construction Management Plan, the Master Schedule, the Project and Construction Budget, and the MIS.

3.3.1.3. Design Phase Information: (Not used).

3.3.1.4. Progress Meetings: The CM shall conduct periodic progress meetings attended by the Owner, Designer and others as necessary. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The CM shall prepare and distribute minutes of these meetings to the Owner, Designer, and others.

3.3.1.5. Review of Design Documents: The CM shall review the design documents for clarity, consistency, constructability and coordination among the Contractors. The results of the review shall be provided in writing as notations on the documents. Notwithstanding the foregoing, the CM shall not be responsible for providing, nor does the CM control, the Project design, and contents of the design documents. By performing the reviews described herein, the CM shall, in no way, be held responsible or liable, in whole or in part, for all or any part of the Project design and design documents. The CM's actions in reviewing the Project design and design documents and in making

recommendations as provided herein are only advisory to the Owner. .

3.3.1.6. Design Recommendations: The CM shall make recommendations to the Owner and Designer with respect to constructability, construction cost, sequence of construction, construction duration, time for construction, and separation of the Project contracts for various categories of work. In addition, the CM shall give to the Designer all data of which it or the Owner is aware concerning patents or copyrights for inclusion in Contract Documents.

3.3.1.7. Owner Design Reviews: (Not used).

3.3.1.8. Approvals by Regulatory Agencies: (Not used).

3.3.1.9. General Conditions: (Not used).

3.3.1.10. Public Relations: The CM shall assist the Owner in public relations activities and shall prepare information for and attend public meetings, either in person or via phone/video call as applicable, regarding the Project.

3.3.1.11. Project Funding: (Not used).

3.3.2. Time Management

3.3.2.1. Revisions to Master Schedule: As necessary throughout the Design Phase, the CM shall recommend revisions to the Master Schedule. The Owner shall issue change orders as needed to the appropriate parties to implement the Master Schedule revisions.

3.3.2.2. Monitoring The Design Phase Milestone Schedule: (Not used).

3.3.2.3. Pre-Bid Construction Schedule: Prior to transmitting Contract Documents to bidders, the CM shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Procurement Phase.

3.3.3. Cost Management

3.3.3.1. Project and Construction Budget Revision: The CM shall make recommendations to the Owner concerning the design changes that may result in revisions to the Project and Construction Budget and divisions of the Work required for the Project.

3.3.3.2. Cost Control: The CM shall prepare an estimate of the construction cost for each submittal of design drawings and specifications from the Designer (30, 60 and 90 percent design). The estimate for each submittal shall be accompanied by a report to the Owner and Designer identifying variances from the Project and Construction Budget. The CM shall coordinate and expedite the activities of the Owner and Designer when changes to the design are required to remain within the Project and Construction Budget.

3.3.3.3. Value Engineering Studies: The CM shall provide value engineering recommendations to the Owner and Designer for major construction components, including cost evaluations of alternative materials and systems.

3.3.4. Management Information System (MIS)

3.3.4.1. Schedule Reports: The CM shall prepare and distribute schedule maintenance reports that shall contrast actual progress against scheduled progress for the Design Phase and the overall Project and shall make recommendations to the Owner for corrective action.

3.3.4.2. Project Cost Reports: The CM shall prepare and distribute project cost reports that indicate estimated costs compared to the Project and Construction Budget and make recommendations to the Owner for corrective action.

3.3.4.3. Cash Flow Report: The CM shall periodically prepare and distribute a cash flow report.

3.3.4.4. Design Phase Change Order Report: The CM shall prepare and distribute Design Phase change order reports that list all Owner-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

3.4. Procurement Phase

3.4.1. Project Management

3.4.1.1. Prequalifying Bidders: The CM shall develop lists of possible bidders and prequalifying bidders. This service shall include the following: preparation and transmission of questionnaires; receiving and analyzing completed questionnaires; interviewing possible bidders, bonding agents, and financial institutions; and preparing summary reports regarding this activity to the Owner. The CM shall also prepare a bidders list for

each bid package. The CM shall comply with all applicable public bidding laws including but not limited to 143-128.1(c) et.seq. and 143-135.8, and the City's Special Instructions to the Minority and Women's Business Enterprise Program Plan.

3.4.1.2. Bidder's Interest Campaign: The CM shall conduct a campaign via telephone, e-mail, and other appropriate correspondence to attempt to create interest among qualified bidders.

3.4.1.3. Notices and Advertisements: The CM shall prepare and place notices and advertisements to solicit bids for the Project.

3.4.1.4. Delivery of Bid Documents: The CM shall expedite the delivery of bid documents to the bidders. The CM shall obtain documents from the Designer and arrange for printing, binding, wrapping and delivery to the bidders. The CM shall maintain a record of bidders receiving documents.

3.4.1.5. Pre-Bid Conference: In conjunction with the Designer, the CM shall conduct a Pre-Bid Conference. These conferences shall be forums for the CM and Designer to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, the project administrative requirements and technical information.

3.4.1.6. Information to Bidders: The CM shall develop and coordinate procedures to provide answers to bidders' questions.

3.4.1.7. Addenda: The CM shall receive from the Designer a copy of all addenda. The CM shall review addenda for clarity, consistency, and coordination among the bidders. Notwithstanding the foregoing, by performing the reviews described herein, the CM shall in no way be held responsible or liable, in whole or in part, for all or any part of the Project design or the content of the design documents. The CM shall also distribute a copy of all addenda to each bidder receiving documents.

3.4.1.8. Bid Opening: The CM shall conduct bid openings and shall evaluate the bids for responsiveness and price and the CM shall consult with the Owner concerning the acceptance or rejection of bids.

3.4.1.9. Awarding of Contracts to Contractors: After consultation with the Owner, the CM shall select each Contractor for the Project. In this connection, CM shall defend, indemnify and hold harmless the Owner from any and all bid contest claims, actions or lawsuits arising from the bid selection process.

3.4.1.10. Preparation of Construction Contracts: The CM shall prepare, execute, and deliver to Owner the Contract Documents between the CM and the Contractors. The CM shall also issue the notices to proceed.

3.4.1.11. Pre-Construction Conference: In connection with the Designer, the CM shall conduct a Pre-Construction Conference during which the CM shall review the reporting procedures and other rules.

3.4.1.12. Permits, Insurance and Labor Affidavits: The CM shall verify that the Contractors have secured the required building permits, bonds, insurance, labor affidavits, and waivers.

3.4.2. Time Management

3.4.2.1. Pre-Bid Construction Schedule: The CM shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents.

3.4.2.2. Contractor's Construction Schedule: The CM shall provide a copy of the Master Schedule to the bidders. As part of the Notice of Award, the CM shall inform each Contractor of the requirements for the preparation of a construction schedule. The Contractor shall prepare its own construction schedule in accordance with the requirements of the Contract Documents.

3.4.3. Cost Management

3.4.3.1. Estimates for Addenda: The CM shall prepare an estimate of costs for all addenda and shall submit the estimates to the Owner for approval. After approval by the Owner, the addenda shall be transmitted to bidders and the Guaranteed Maximum Price and the CM's compensation shall be adjusted as provided in this Agreement.

3.4.3.2. Analyzing Bids: Upon receipt of bids, the CM shall evaluate the bids, including alternate prices and unit prices.

3.4.4. Management Information System (MIS)

3.4.4.1. Schedule Maintenance Reports: The CM shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.

3.4.4.2. Project Cost Reports: The CM shall prepare and distribute the project cost reports during the Procurement Phase. The reports shall specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget.

3.4.4.3. Cash Flow Reports: The CM shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual award prices and construction costs for the Project and the reports shall specify the actual cash flow compared to the projected cash flow.

3.5. Construction Phase: (Construction Phase to be included in future change order, incorporating Phase 2 – Construction Services as Construction Manager At-Risk.)

3.5.1. Project Management

3.5.1.1. Onsite Management and Construction Phase Communication Procedures: The CM shall provide and maintain a management team on the Project site to provide contract administration and the CM shall establish and implement coordination and communication procedures among the CM, Owner, Designer, and Contractors. Neither the Owner nor the CM shall have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, and/or procedures, or for safety precautions and programs in connection with the Contractors' work, since these are solely the Contractors' responsibilities under their construction contracts.

3.5.1.2. Contract Administration Procedures: The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM shall maintain daily job reports. The CM shall be the party to whom requests for information, submittals, Contractor schedule

adjustments, substitutes, change order requests and payment requests shall be submitted.

3.5.1.3. Project Site Meetings: Periodically the CM shall conduct meetings at the Project site with each Contractor and the CM shall conduct coordination meetings with all Contractors, the Owner and Designer. The CM shall record, transcribe and distribute minutes to all attendees, the Owner and Designer.

3.5.1.4. Coordination of Other Independent Consultants: Technical inspection and testing provided by the Designer or others shall be coordinated by the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test. In this paragraph, the CM is not responsible for providing, nor does the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function and shall in no way be held responsible or liable, in part or in whole, for all or any part of such inspection and testing, or lack thereof.

3.5.1.5. Review of Requests for Changes to the Contract Time and Price: The CM shall review the contents of a request for changes to the contract times or prices submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests and make recommendations to the Owner as to the validity thereof. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed report to the Owner for acceptance and prepare the necessary change order documents for signing by the Contractor and Owner.

3.5.1.6. Quality Review: In consultation with the Designer, the CM shall establish and implement a program to monitor the quality of construction. The purpose of the program shall be to guard the Owner against defects and deficiency in the work of the Contractor. The CM shall reject work and transmit to the Contractor a notice of nonconforming work when it is the opinion of the CM that the work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. Notwithstanding the foregoing, by performing the reviews described herein, the CM shall be acting in a

manner so as to assume responsibility and liability in whole or in part, for all or any part of the Project design. Request for Clarifications and Interpretations of the Contract Documents related to the design shall be referred to the Designer for response. The Owner shall be kept informed of all requests and responses by the Designer and any potential impact of such responses on the project cost or schedule. Changes to the Contract Documents that involve cost or time impacts, must be made in accordance with Contract Documents.

3.5.1.7. Operation and Maintenance Materials: The CM shall receive from the Contractors operation and maintenance manuals, warranties, and guarantees for materials and equipment installed in the Project and deliver in both electronic and bound hard copy format O&M Materials to the Owner.

3.5.1.8. Substantial Completion: In consultation with the Designer, the CM shall determine when the Project and the Contractor's work is substantially complete. In consultation with the Designer, the CM shall, prior to issuing a Certificate of Substantial Completion, prepare a list of work not completed and completed work that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion.

3.5.1.9. Final Completion: In consultation with the Designer, the CM shall determine when the Project and the Contractor's work is finally completed and, following completion of corrections, shall issue a Certificate of Final Completion to the Owner. Following the receipt of payment from the Owner, the CM shall make all payments due to Contractors.

3.5.2. Time Management

3.5.2.1. Master Schedule: The CM shall adjust and update the Master Schedule and distribute copies to the Owner and Designer. All adjustments to the Master Schedule shall be made for the benefit of the Project.

3.5.2.2. Contractors' Construction Schedules: The CM shall review each Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

3.5.2.3. Construction Schedule Report: The CM shall review the progress of construction of each Contractor

on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in each Contractor's Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to each periodic Construction Schedule report that shall be prepared and distributed to each Contractor, the Owner and Designer. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to each Contractor. The CM shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by each Contractor.

3.5.2.4. CM Review of Time Extension Requests: The CM shall, prior to the issuance of a change order, determine the effect on the Master Schedule of time extensions requested by the Contractor in each such change order.

3.5.2.5. Recovery Schedules: If the CM determines that any specific Contractors are delaying the Schedule, the CM may require such Contractors to prepare and submit a recovery schedule as specified in the Contract Documents.

3.5.3. Cost Management

3.5.3.1. Schedule of Values (Each Contract): The CM shall, in participation with the Contractors, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for the allocation of the contract price to the activities shown on each Contractor's Construction Schedule.

3.5.3.2. Allocation of Costs to Contractor's Construction Schedule: Each Contractor's Construction Schedule shall have its total contract price allocated among each such Contractor's scheduled activities so that each of the Contractor's activities shall be allocated a price and the sum of the prices of the activities shall equal the total contract price. The CM shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress Payments to the Contractor shall be based on the Contractor's percentage of completion of the scheduled activities as set out in the Construction Schedule report and the Contractor's compliance in accordance with the Contract Documents.

3.5.3.3. Change Order Control: The CM shall establish and implement a change order control system. All

proposed change orders shall first be described in detail in writing by the Owner to the CM and then shall be described in detail in a request for proposal to the affected Contractor(s), accompanied by technical drawings and specifications prepared by the Designer. In response to the request for a proposal, the Contractor(s) shall submit to the CM for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The CM shall discuss the proposed change order with the Contractor(s) and endeavor to determine the Contractor's basis for the cost to perform the Work and the effect, if any, on the Guaranteed Maximum Price. The CM shall make recommendations to the Owner prior to the Owner's acceptance of change orders and, following Owner acceptance, shall prepare for signature by the CM and Contractor or Owner the change order documents. The CM shall verify that the Work, and any adjustment of time required by approved change orders has been incorporated into the Contractor's Construction Schedule and the Revised Master Schedule.

3.5.3.4. Cost Records: In instances where a lump sum or unit price is not determined prior to performing work described in a request for proposal as provided in Paragraph 3.5.3.3, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Contractor in performing the Work.

3.5.3.5. Trade-Off Studies: (Not used).

3.5.3.6. Progress Payments: In consultation with the Designer, the CM shall review the payment applications submitted by each Contractor and determine whether the amount requested reflects the progress of the Contractor's work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CM and delivered to the Owner. The CM shall make payments that are due to all contractors, suppliers, and material men within ten (10) days following the receipt of payment for the work from the Owner. In addition, the CM shall endeavor to keep the Project and the site on which work is performed free and clear of all liens and claims from contractors, subcontractors, or suppliers.

3.5.4. Management Information System (MIS)

3.5.4.1. Schedule Maintenance Reports: The CM shall prepare and distribute schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.

3.5.4.2. Project Cost Reports: The CM shall prepare and distribute project cost reports during the Construction Phase. The reports shall specify actual project and construction costs compared to the Project and Construction Budget.

3.5.4.3. Project and Construction Budget Revisions: The CM shall make recommendations to the Owner concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.

3.5.4.4. Cash Flow Reports: The CM shall prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

3.5.4.5. Change Order Reports: The CM shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all Owner accepted change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware.

3.5.4.6. Progress Payment Reports (Each Contract): The CM shall prepare and distribute progress payment reports. The reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this report shall be a certificate of payment that shall be signed by the CM and delivered to the Owner for use by the Owner in making payments to the CM.

3.5.4.7. Contractor's Safety Program Report: The CM shall review the safety programs of each Contractor as required by the Contract Documents and coordinate the safety programs for the Project.

3.6. Post Construction Phase: (to be included in future change order incorporation Phase 3 – Post-

Construction Services as Construction Manager At-Risk).

3.6.1. Project Management

3.6.1.1. Record Documents: The CM shall coordinate and expedite submittals of information from the Contractors for preparation of record drawings and specifications and shall coordinate and expedite the transmittal of such record documents to the Owner.

3.6.1.2. Organize and Index Operations and Maintenance Materials: Prior to final completion of the Project the CM shall compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner.

3.6.1.3. Occupancy Permit: The CM shall assist the Owner in obtaining an occupancy permit by accompanying governmental officials during inspections of the Project, preparing, and submitting documentation to governmental agencies and coordinating final testing and other activities.

3.6.2. Time Management

3.6.2.1. Occupancy Plan: The CM shall prepare an Occupancy Plan for the Project. This plan shall be provided to the Owner.

3.6.3. Cost Management

3.6.3.1. Change Orders: The CM shall continue to provide services related to change orders as specified in this agreement.

3.6.4. Management Information System (MIS)

3.6.4.1. Closeout Reports: At the conclusion of the Project, the CM shall prepare final project accounting and closeout reports.

3.6.4.2. MIS Reports for Move-in and Occupancy: The CM shall prepare and distribute reports associated with the Occupancy Plan.

3.7. Additional Services

3.7.1. At the request of the Owner, the CM shall perform the following Additional Services and shall be compensated for same as provided in Article 7 of this Agreement. The CM shall perform Additional Services

only after the Owner and CM have executed a written change order to this Agreement providing for such services. Additional Services may include:

3.7.1.1. Services related to investigation, appraisal, or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by the Owner;

3.7.1.2. Services related to procurement, storage, maintenance and installation of Owner-furnished equipment, materials, supplies and furnishings;

3.7.1.3. Services related to determination of space needs;

3.7.1.4. Preparation of space programs;

3.7.1.5. Services related to building site investigations and analysis;

3.7.1.6. (Not used).

3.7.1.7. (Not used).

3.7.1.8. Preparation of financial, accounting or MIS reports not provided under Basic Services;

3.7.1.9. Performance of technical inspection or testing;

3.7.1.10. Preparation of an Operations and Maintenance Manual;

3.7.1.11. Services related to recruiting and training of maintenance personnel;

3.7.1.12. Performance of warranty inspections during the warranty period of the Project;

3.7.1.13. Services related to interfacing or working with the Designer or other consultants that are beyond the scope of this Agreement;

3.7.1.14. Consultation regarding replacement of work damaged by fire or other cause during construction and furnishing services in connection with the replacement of such work;

3.7.1.15. Services made necessary by the default of a Contractor;

3.7.1.16. Preparation for and serving as a witness in connection with any public or private hearing or arbitration, mediation or legal proceeding;

3.7.1.17. Assisting the Owner in public relations activities and preparing information for and attending public meetings; and

3.7.1.18. Services related to move-in including preparing and soliciting responses to requests for proposals, preparing and coordinating the execution of contracts, conducting pre-moving conferences, administering the contract for moving activities in conjunction with the move-in for the Project and providing on-site personnel to oversee the relocation of furniture and equipment by the movers while actual move-in is in progress.

ARTICLE 4: DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

4.1. The duration of the CM's Basic services under this Agreement for Phase 1 work, only, shall be 350 consecutive calendar days, unless otherwise mutually agreed, from the commencement date for Phase 1 work. Other durations to be determined and set forth in future change orders.

4.1.1. The commencement date for the CM's Basic Services shall be the date of execution of this Agreement by the Owner as stated herein or the date on which the Owner issues to the CM a written instruction to proceed with Basic Services, whichever is earlier.

4.1.2. The CM's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of design and construction occur simultaneously, some of the phase durations may overlap.

4.1.2.1. (Not used).

4.1.2.2. The CM's Basic Services during the Design Phase shall be performed during Phase 1 work duration.

4.1.2.3. The CM's Basic Services during the Procurement Phase shall be performed during Phase 1 work duration.

4.1.2.4. The CM's Basic Services during the Construction Phase – To be determined in future change order.

4.1.2.5. The CM's Basic Services during the Post-Construction Phase – To be determined in future change order.

ARTICLE 5: CHANGES

5.1. Owner Changes

5.1.1. The Owner, without invalidating this Agreement, may make changes in the CM's Basic Services specified in Article 3 of this Agreement. The CM shall promptly notify the Owner of changes which increase or decrease the CM's compensation, the duration of the CM's Basic Services, or both.

5.1.2. Additional Compensation and Extended Duration: The CM shall be entitled to receive additional compensation and additional time when the scope of Basic Services is increased or extended through no fault of the CM. If the scope of Basic Services is increased or the duration of the CM's Basic Services is extended or the duration of the Basic Services to be performed within a phase duration specified in Article 4 is extended, the CM shall be entitled to receive additional compensation, and the duration of the Agreement shall be extended. A written request for additional compensation shall be given by the CM to the Owner within thirty (30) days of the occurrence of the event giving rise to such request. The amount of additional compensation to be paid and the amount of extension of the duration of this Agreement shall be determined on the basis of the CM's cost, a customary and reasonable adjustment in the CM's fixed or lump sum fee consistent with the provisions of Article 7, and a determination of the length of the extensions of the duration of this Agreement.

5.1.3. Changes in the CM's Basic Services: Changes in the CM's Basic Services and entitlement to additional compensation shall be made by a written change order to this Agreement executed by the Owner and the CM. The amendment shall be executed by the Owner and CM prior to the CM performing the services required by the amendment. The CM shall proceed to perform the services required by the amendment only after receiving notice directing the CM to proceed.

5.1.4. Payment of Additional Compensation: The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

5.2. CM Changes

5.2.1. CM agrees the following personnel are essential to the performance of the Project and they shall devote the time necessary to ensure project success. These persons shall not be replaced without the express written consent of the Owner: <insert key CM Personnel>

ARTICLE 6: OWNER'S RESPONSIBILITIES

6.1. The Owner shall provide to the CM complete information regarding the Owner's requirements for the Project. The CM, however, does not warrant the accuracy or completeness of any information provided by the Owner.

6.2. The Owner shall examine information submitted by the CM and shall render decisions thereto promptly.

6.3. The Owner shall, at its expense, furnish design, legal, accounting and insurance counseling services as may be necessary for the Project.

6.4. The Owner shall furnish insurance for the Project as specified in Article 8.

6.5. If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the Owner shall give prompt written notice thereof to the CM.

6.6. The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CM.

6.7. The Owner shall retain a Designer whose services, duties and responsibilities shall be described in a written agreement between the Owner and Designer. The services, duties, and responsibilities of the

Designer set out in the agreement between the Owner and Designer shall be compatible and consistent with this Agreement and the Contract Documents. The Owner shall, in its agreement with the Designer, require that the Designer perform its services in cooperation with the CM, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the Owner and documented by the CM.

6.8. The Owner shall approve the Project and Construction Budget and Schedule, and any subsequent revisions as provided in Article 3 of this Agreement.

6.9. If the Owner contracts separately with any other parties, the Owner shall cause all such agreements to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation against Owner and CM.

6.10. At the request of the CM, sufficient copies of interim and final drawings, specifications and Contract Documents shall be furnished to the CM by the Owner at the Owner's expense.

6.11. The Owner shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

6.12. The Owner shall furnish evidence that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, the CM is not required to commence its services and may, if such evidence is not presented within a reasonable time, or if after such evidence has been furnished, the Owner shall materially vary such financial arrangements without prior notice to the CM, suspend the services specified in this Agreement upon fifteen (15) days written notice to the Owner and in such event, the CM shall be compensated in the manner provided in Article 9.2.

6.13. The Owner, its representatives and consultants shall communicate with the Contractors only through the CM, unless a Contractor lodges a complaint against the CM directly to the Owner. In that instance, the Owner will direct the Contractor and CM to resolve the

issue and the CM will keep the Owner informed as to the progress and status of these negotiations.

6.14. The Owner shall send to the CM and shall require the Designer to send the CM copies of all notices and communications sent to or received by the Owner or Designer relating to the Project.

6.15. The Owner shall designate, in writing, an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the Project. This representative shall have the authority to approve changes in the scope of the project and shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner.

6.16. The Owner shall make payments to the CM on the basis of the Contractor's payment applications that are certified by the CM and on the basis of the CM's invoices for its services performed.

ARTICLE 7: COMPENSATION FOR CM SERVICES AND PAYMENT

7.1. The CM shall receive compensation for its services in accordance with Paragraph 7.2 (Cost Plus Fixed Fee), and Paragraph 7.3 (Lump Sum).

7.2. Cost Plus Fixed Fee: The Owner shall compensate the CM on the basis of the CM's cost, plus fixed fee for Phase 2 services only, and in accordance with the terms and conditions of this Agreement as follows:

7.2.1. Compensation for Basic Services: The CM shall be compensated for performing the Basic Services for Phase 2 Work, as described in Article 3 and in Exhibit B to be fully set forth in a future change order, as follows:

A fixed fee of: [Click here to enter text.](#) Dollars (\$[Click here to enter text.](#));

7.2.1.1. The cost of employees working on the Project, other than principals, in an amount as set forth in Exhibit D. ;

7.2.1.2. Employees assigned to the Project and working at the construction site or employees for which the Owner provides all office facilities and services, excluding the project manager and assistant project managers, a multiple of 1.05 (5% mark-up);

7.2.1.3. Employees assigned to the Project and working in the CM's administrative office, including the project manager and assistant project managers, a multiple of 1.05 (5% mark-up);

7.2.1.4. Construction and craft labor changes stationed at the construction site, a multiple of 1.05(5% mark-up);

7.2.1.5. Principals of the CM who participate in the Project, as set forth in Exhibit D..

7.2.1.6. Independent engineers, architects and other consultants employed by the CM and performing services related to the Project, (to be determined in a future change order) , over the amount of the invoice for such services.

7.2.2. Direct Expenses

7.2.2.1. In addition to the compensation for Basic and Additional Services stated herein, the CM shall be reimbursed for direct expenses for performing its Basic and Additional Services. Direct expenses are those actual expenditures made by the CM, its principals, employees, independent engineers, architects, and other consultants in the interest of the Project, including, without limitation:

7.2.2.1.1. Long distance telephone calls, telegrams and fees paid for securing the approval of authorities having jurisdiction over the Project;

7.2.2.1.2. Handling, shipping, mailing and reproduction of materials and documents;

7.2.2.1.3. Transportation and living expenses when traveling in connection with the Project;

7.2.2.1.4. Computer equipment rental or service fees;

7.2.2.1.5. Computer software purchased;

7.2.2.1.6. Electronic data processing service and rental of electronic data processing equipment;

7.2.2.1.7. Word processing equipment rental;

7.2.2.1.8. Premiums for insurance beyond the limits normally carried by the CM that are required by the terms of this Agreement;

7.2.2.1.9. (Not used);

7.2.2.1.10. Temporary living expenses of employees who are not relocated, but assigned to the Project;

7.2.2.1.11. Gross receipts taxes, sales or use taxes, services taxes and other similar taxes required to be paid as a result of this Agreement;

7.2.2.1.12. Field office expenses including the cost of office rentals, field telephones, utilities, field office furniture, equipment, and supplies; and

7.2.2.1.13. Premium time work.

7.2.2.2. The CM shall be compensated at cost plus a fee of ten (10) percent for its administrative expenses for the cost of materials, equipment, supplies and subcontractors related to work that is provided by the CM at the request of the Owner. Any direct labor provided by the CM related to General Conditions work shall be paid to the CM in accordance with Paragraph 7.2.1.5.

7.2.3. Construction Manager's Accounting Records

7.2.3.1. Records for the CM's personnel expenses, independent engineer's, architect's and other consultant's fees and direct expenses pertaining to the Project shall be maintained on the basis of generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's representative at mutually convenient times for a period of two years after completion of the CM's Basic Services.

7.2.4. Payments

Payments to the CM shall be made monthly, not later than fifteen (15) days after presentation of the CM's invoice to the Owner as follows:

7.2.4.1. Payment of the Fixed Fee as indicated in Paragraph 7.2.1.1 shall be in amounts prorated equally over the duration of the CM's Basic Services, as set forth in Article 4; to be included in future change order incorporating Exhibit B.

7.2.4.2. Payment of personnel expense and the fixed hourly rate for principals shall be in amounts equal to the actual hours spent during the billing period on the Project, multiplied by the rates and multipliers denoted in Paragraphs 7.2.1.2, 7.2.1.3, 7.2.1.4, and 7.2.1.5, ;

7.2.4.3. Payment of independent engineer, architect and other consultant services shall be in amounts equal

to the invoice in receipt by the CM for the billing period times the multiplier stated in Paragraph 7.2.1.6;

7.2.4.4. Reimbursement for direct expenses shall be in amounts equal to expenditures made during the billing period and during previous billing periods not yet invoiced;

7.2.4.5. No deductions shall be made from the CM's compensation due to any claim of the Owner, Contractors, or others not a party to this Agreement or due to any liquidated damages, retainage or other sums withheld from payments to the Contractors or others not a party to this Agreement; and

7.2.4.6. Payments due to the CM that are unpaid for more than thirty (30) days from the date of the CM's invoice shall bear interest at the annual rate of 1% interest from the due date, compounded monthly.

7.2.5. Compensation for Additional Services

The CM shall be compensated, and payments shall be made for performing Additional Services in the same amount and manner as provided in Article 7 for Basic Services. There shall be an increase in the Fixed Fee set out in Paragraph 7.2.1.1 in an amount that is mutually agreeable between the Owner and CM.

7.3. Lump Sum

The Owner shall compensate the CM for Basic Services on the basis of a Lump Sum in accordance with Exhibit A and C and the terms and conditions of this Agreement as follows:

7.3.1. Compensation for Basic Services

The CM shall be compensated for performing Basic Services described in Article 3, a total Lump Sum in the amount of [Click here to enter text](#). Dollars (\$[Click here to enter text](#).) for Phase 1 only, which shall be paid in 4 installments as follows:

Installment No.	Installment Due Date	Installment Amount
1	Click here to enter text .	%
2		%
3		%
4		%

Phase 3 to be determined in future change order, including Exhibit C.

7.3.2. Payments

Payments to the CM shall be made monthly, not later

than fifteen (15) days after receipt of the CM's Invoice by the Owner.

7.3.2.1. (Not used).

7.3.2.2. Payments due to the CM that are unpaid for more than thirty (30) days from the due date of the CM's invoice shall bear interest at the annual rate of 1% from the due date, compounded monthly.

7.3.3. Compensation for Additional Services

The CM shall be compensated, and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the Owner and CM.

7.4. Guaranteed Maximum Price (GMP)

7.4.1. The Guaranteed Maximum Price (GMP) shall be determined and managed as follows:

7.4.1.1. During Phase 1, the CM is to establish a Guaranteed Maximum Price for the Project. The Guaranteed Maximum Price shall be documented by the CM as defined in Article 12 and once established, the Guaranteed Maximum Price shall be subject to modification only as defined in this Agreement. Should the Guaranteed Maximum Price not move forward, there would not be a termination fee.

7.4.1.2. (Not used).

7.4.1.3. (Not used).

7.4.1.4. (Not used).

7.4.1.5. In the event that the Guaranteed Maximum Price is accepted by the Owner within the time stipulated herein, the applicable sections of Article 12 of this Agreement shall be completed and initialized by both parties to this Agreement and the CM shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the CM's Basic Services.

7.4.1.6. Construction contracts for the Work required for the Project shall be between the CM and Contractors. The CM shall request and receive bids for each contract pursuant to N.C.G.S. 143-128.1 (C) and shall consult with the Owner with respect to award of a contract to the lowest responsive and responsible bidder. The CM shall enter into a contract with that

bidder within five (5) days after receipt of approval of award from the Owner.

7.4.1.7. The CM shall be eligible to perform work of specific trades on the Project, only as specifically allowed by N.C.G.S 143-128.1 (C).

7.4.1.8. The Guaranteed Maximum Price (GMP) is the total cost of the Project, as defined herein plus the CM's fee for Basic Services for the Construction and Post Construction Phases. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services, and allowances to complete the project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CM as part of the Guaranteed Maximum Price documentation, in accordance with Paragraph 12.1.2, and appended hereto.

7.4.1.9. The Guaranteed Maximum Price shall include those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any increase or decrease in taxes that affect the Guaranteed Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that price by change order.

7.4.1.10. The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 7.4.3.

7.4.2. Cost of the Project

The term "cost of the Project" shall include all amounts paid by the Owner to the CM for payment to all separate Contractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items, plus the CM's Fee.

7.4.2.1. The cost of the Project shall not include the following:

7.4.2.1.1. The CM's fee for Basic Services;

7.4.2.1.2. All professional fees paid by the Owner to the Designer or other consultants retained directly by the Owner;

7.4.2.1.3. All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner and outside the scope of the Guaranteed Maximum Price;

7.4.2.1.4. All Additional Services costs as defined herein; or

7.4.2.1.5. All other costs not within the control of the CM or identified as being not within the Guaranteed Maximum Price.

7.4.2.2. The cost of the Project may be further defined in the documentation required by Paragraph 12.1.2 of this Agreement. If the requirements of this Paragraph 7.4.2 and the documentation required by Paragraph 12.1.2 differ, then the CM shall identify and explain the difference, but the documentation provided in accordance with Paragraph 12.1.2 shall be the basis for determining the scope of the Guaranteed Maximum Price.

7.4.3. Adjustments to the Guaranteed Maximum Price
Subject to the limitations set forth in Section 3.5.1.1 and 3.5.1.6, The CM understands, confirms, and agrees that its responsibility hereunder is to provide contract administration for the construction of the Project such that it is constructed in accordance with the drawings and specifications. It is recognized that the Guaranteed Maximum Price may be determined based upon incomplete design documents and in those instances in which the drawings and specifications are not complete at the time the Guaranteed Maximum Price is established, the CM shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources. The CM shall determine unit process and the cost of the Project and shall make those assumptions regarding the project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The Owner and CM shall use the documentation specified in Paragraph 12.1.2 in determining whether or not the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) days from the date of a written request for an adjustment.

7.4.3.1. The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

7.4.3.1.1. By mutual acceptance of a lump sum, properly itemized and supported by cost data; or

7.4.3.1.2. By unit prices defined and listed in Exhibit A; or

7.4.3.1.3. If neither of the methods set forth in 7.4.3.1.1 or 7.4.3.1.2 is agreed upon by the Owner, the CM provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the cost records for the changed work. Choice of this method shall not restrict the Owner or the CM from submitting the matter to dispute resolution as set forth in Article 10 hereof as to the justification or right of the CM to an increase in the Guaranteed Maximum Price due to such work. In such case, the CM shall keep and present in such form as may be agreeable to the Owner an itemized accounting together with appropriate supporting data of the actual cost of the Project.

7.4.3.2. If the unit prices are stated and if the quantities originally contemplated by the CM are so changed in a proposed change order or as a result of several change orders that application of the agreed unit prices to the quantities or work proposed cause substantial inequity to the Owner or the CM, the applicable unit prices and Guaranteed Maximum Price shall be adjusted.

7.4.3.3. Should concealed or unknown physical conditions be encountered that differ materially from those identified in the drawings or specifications, or that are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for hereunder, the Guaranteed Maximum Price and the completion date shall be adjusted upon claim made by either party to this Agreement within fifteen (15) calendar days after the first observance of the conditions. The CM shall not be responsible for pre-existing hazardous materials encountered at the Project site and the Guaranteed Maximum Price and completion date shall be adjusted for any impacts related to such materials.

7.4.3.4. The Designer shall have the authority to order minor changes in the Project consistent with the intent

of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the Owner and the CM prior to the work being performed. The CM shall have the right to dispute whether a Designer-ordered change is minor in character or instead requires the issuance of a change order.

7.4.4. Adjustments to the CM's Compensation

The CM shall promptly notify the Owner, in writing, when changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the Owner or Designer increase or extend the scope or duration of the CM's Basic Services. The CM shall be entitled to receive additional compensation and an increase in the duration of this Agreement pursuant to the provision of Article 5 and consistent with the provisions of Article 7 of this Agreement.

ARTICLE 8: INSURANCE AND MUTUAL INDEMNITY

8.1. CM's Liability Insurance

8.1.1. The CM shall purchase and maintain such insurance that shall protect the CM from the claims set forth below that may arise out of or result from the CM's performance of services pursuant to this Agreement: CM's professional liability insurance: If CM will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then CM shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two (2) years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by CM itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

8.1.1.1. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the Work performed;

8.1.1.2. Claims for damages because of bodily injury, occupational sickness or disease or death of CM's employees under applicable employer's liability law;

8.1.1.3. Claims for damages because of bodily injury or death of any person other than CM's employees;

8.1.1.4. Claims for damages insured by usual personal injury liability coverage that are sustained by any person as a result of an offense directly related to the employment of such person by the CM or by any other person.

8.1.1.5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss or use there from; or

8.1.1.6. Claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle.

8.1.2. The CM's commercial general and motor vehicle liability insurance, as required by Paragraph 8.1.1, shall be written for not less than the following limits of liability:

a. Commercial General Liability

1. Bodily Injury and Property Damage:

\$1,000,000.00 Each Occurrence

\$2,000,000.00 Aggregate

2. Personal Injury:

\$1,000,000.00 Each Occurrence

\$2,000,000.00 Aggregate

3. Products and Completed Operations:

\$1,000,000.00 Each Occurrence

\$2,000,000.00 Aggregate

b. Commercial Motor Vehicle Liability

1. Bodily Injury and Property Damage:

Combined Single Limit

\$1,000,000.00

8.1.3. Commercial general liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

8.1.4. The foregoing policies shall contain a provision that coverages afforded under the policies shall not be cancelled or expire until at least thirty (30) days written notice as been given to the Owner and shall include wither a liability endorsement covering this Agreement

or an endorsement making the Owner an additional insured under the policies. Certificates of Insurance showing such coverages to be in force shall be filed with the Owner prior to commencement of the CM's services.

8.2. Builder's Risk Insurance

8.2.1. The CM shall be responsible for purchasing and maintaining insurance to protect the Project, as defined in Article 2, from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as loss payee the Owner, the CM, the Contractors, and their subcontractors and shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, defective design, negligent workmanship, or defective material. The CM shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

8.3. Property Insurance

8.3.1. (Not used).

8.3.2. If the Owner occupies or uses a part or parts of the Project prior to substantial completion thereof, such occupancy shall not occur until the Owner obtains property insurance for the structure and until all insurance companies providing insurance for the Project consent to such occupancy by endorsement to the insurance policies.

8.4. Owner's and Designer's Insurance

8.4.1. (Not used).

8.5. Notices and Recovery

8.5.1. The Owner and CM each shall provide the other with copies of all policies thus obtained for the Project. Each party shall provide the other with forty-five (45) days' notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

8.6. Waiver of Subrogation

8.6.1. The Owner and the CM waive all rights against each other and against the Contractors, the Designer, and consultants, agents, and employees of the other for damages occurring during construction and covered

by any property insurance required for this Project. The Owner and the CM shall each require appropriate similar waivers from their contractors, designers, consultants, and agents.

8.7. Indemnity

8.7.1. To the fullest extent permitted by law, the CM shall defend, indemnify, and hold harmless the Owner, its employees, agents, officers, directors, and partners from and against any and all damages arising from bodily injury or property damage and reasonable attorneys' fees incurred by the Owner to the extent caused solely by the negligent act, error, or omission of the CM, in performance of services under this Agreement. The CM shall procure and maintain insurance as required by and set forth in this Agreement.

8.7.2. (Not used).

8.7.3. The Owner hereby agrees to defend, indemnify, and hold harmless the CM and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage for which the Owner is liable that arise out of or result from the sole negligent acts or omissions of the Owner, its employees, agents, representatives, independent contractors, suppliers, and the Designer.

8.7.4. The CM shall cause the each Contractor to defend, indemnify and hold harmless the Owner, the CM and the Designer from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, and expenses and fees that are asserted against the Owner and the Designer and that arise out of or result from negligent acts or omissions by the Contractor, its employees, agents and representatives in performing the Work.

8.8. Payment and Performance Bonds

8.8.1. The CM shall provide the Owner with a Payment Bond and Performance Bond for the Project (Phase 2 – Construction – only) on a form to be provide by the City. No Performance and Payment Bond required for Phase 1 – Preconstruction.

ARTICLE 9: TERMINATION AND SUSPENSION

9.1. Termination

9.1.1. This Agreement may be terminated by the Owner for convenience after thirty (30) days written notice to the CM.

9.1.2. This Agreement may be terminated by either party hereto upon thirty (30) days written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the terminating party after a fifteen (15) day curing period during which the non-terminating party shall have the opportunity to develop a plan to resolve concerns or if the Project in whole or substantial part is stopped for a period of sixty (60) days by the Owner or under an order of any court or other public authority having jurisdiction over the Project or either of the Parties.

9.1.3. In the event of termination pursuant to Paragraph 9.1.1, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due and all termination expenses. Termination expenses are defined as those expenses arising prior, during and subsequent to termination that are directly attributable to the termination.

9.1.3.1. (Not used).

9.1.3.1.1. (Not used).

9.1.4. In the event of termination pursuant to Paragraph 9.1.2, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due and all termination expenses. No amount computed as provided in Paragraphs 9.1.3.1 and 9.1.3.2 shall be paid in addition if the termination is due to the CM's failure to substantially perform in accordance with the terms of this Agreement.

9.2. Suspension

9.2.1. The Owner may order, in writing, the CM to suspend all or any part of the CM's services for the Project for the convenience of the Owner or for work stoppage beyond the control of the Owner or the CM. If the performance of all or any part of the services for

the Project is suspended, an adjustment in the CM's compensation shall be made for the increase, if any, in the cost of the CM's performance of this Agreement caused by such suspension and this Agreement shall be modified in writing accordingly.

9.2.2. In the event the CM's services on the Project are suspended, the Owner shall reimburse the CM for all of the costs of its construction site staff, assigned Project home office staff and other costs provided for by this Agreement for the first thirty (30) days of such suspension. The CM shall reduce the size of such staff for the remainder of the suspension period as directed by the Owner and during such period, the Owner shall reimburse the CM for all costs of reduced staff. Upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size.

9.2.3. Persons assigned to another project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced. The Owner shall reimburse the CM for costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.

9.2.4. If the Project is suspended by the Owner for more than three (3) months, the CM shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension, together with direct expenses then due and all expenses and costs directly resulting from such suspension. If the Project is resumed after being suspended for more than six (6) months, the CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 10: DISPUTE RESOLUTION

10.1. Mediation/Litigation

10.1.1. If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through good faith direct discussions between their representatives. If the Parties' representatives are not able to resolve such matter within five (5) business days of the date of the first discussion, the Parties' representatives shall immediately inform senior executives of the Parties

who shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, as a prerequisite to maintaining any action based on this Agreement, all such claims, disputes or controversies shall be presented for non-binding mediation before JAMS or such other neutral as may be agreed upon between the parties. If the dispute cannot be settled by mediation within sixty (60) days, the parties shall submit the dispute to litigation in state or federal court venued in the state and county where the Project is located.

10.1.2. The prevailing party in any dispute arising out of or relating to this Agreement, shall be entitled to recover from the other party the reasonable attorney's fees incurred by that party in connection with this dispute.

10.2. Joinder of Other Parties in Litigation
In any litigation filed in accordance with this Agreement, either party thereto, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded therein.

ARTICLE 11: ADDITIONAL PROVISIONS

11.1. Confidentiality

Subject to the North Carolina Public Records laws, the CM will keep all information concerning the Project confidential, except for communications incident to completion of the Project between the CM, Designer, and Contractor, and their independent professional engineers, architects and other consultants and subcontractors, and accountants and attorneys, and except for publicity approved by the Owner and communications in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.

11.2. Limitation and Assignment

11.2.1. The Owner and the CM each bind itself, its successors, assigns and legal representatives to the terms of this Agreement.

11.2.2. Neither the Owner nor the CM shall assign or transfer its interest in this Agreement without the written consent of the other, except that the CM may

assign accounts receivable to a commercial bank for securing loans without approval of the Owner. However, nothing contained in this paragraph can prevent the CM from employing such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services hereunder.

11.3. Governing Law

11.3.1. Unless otherwise provided, this Agreement shall be governed by the law of the State where the Project is located.

11.4. Extent of Agreement

11.4.1. This Agreement represents the entire and integrated agreement between the Owner and the CM and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Designer are not intended third party beneficiaries of this Agreement.

11.5. Severability

11.5.1. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

11.6. Additional Project Phases

11.6.1. Additional services, identified as Phase 2, Phase 3, etc. may be added from time to time as mutually agreed. These services may include additional preconstruction, construction, and post construction services. In the event that these services are added, previous articles which may have otherwise been deleted or modified may then be added to the Agreement. In the event of such an occurrence, a written change order clearly identifying the required changes shall be included with the revision.

11.7. Delays & Extension of Time

11.7.1. Notwithstanding any other provisions herein, if, after the Execution Date of this Agreement, there is a change in applicable federal, state, or local laws, rules, regulations, guidelines, or other legal requirements, whether through legislation, judicial or administrative

decisions or decrees, or any other governmental determinations (hereinafter "Change in Law"), that unavoidably and materially affects a party's performance of this Agreement, including but not limited to delays and extra costs, the parties agree to engage in good faith negotiations of such amendments or modifications to this Agreement and any performance requirements as the parties shall determine to be necessary to account for the impact of such Change in Law. A party seeking relief under this provision shall (1) promptly notify the other party of the Change in Law and provide in such notice details supporting its assertion that its performance has been materially affected by the Change in Law; and (2) take commercially reasonable steps to mitigate the adverse impact of such Change of Law upon that party's performance.

11.7.2. All parties agree to negotiate and incorporate Delays and Extension of Time clauses into Construction Contract, similar to the language above.

11.8. Meaning of Terms

11.8.1. References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

11.8.2. The meaning of terms used herein shall be consistent with the definitions expressed in the CMAA Standard Form Agreements, Contracts and General Conditions.

11.9. Notices

11.9.1. Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

To the Owner: Mr. Danny Briggs, EI, CDT, Senior Civil Project Engineer, Water Resources, City of Greensboro, 2602 S. Elm-Eugene Street, Greensboro, NC 27406

To the CM: <Insert>

ARTICLE 12: SPECIAL GUARANTEED MAXIMUM PRICE PROVISIONS

12.1. Guaranteed Maximum Price (to be included in future change order)

12.1.1. Upon the Designer's preparation and Owner's approval of 100%-complete drawings the Owner and the CM shall set a Guaranteed Maximum Price for the Project. Until such time, CM shall be compensated as set forth in Section 7.1 hereof. CM will provide intermediate GMP options at 30%, 60%, and 90% design.

12.1.2. Documentation of the Guaranteed Maximum Price shall be developed by the CM from the design drawings and specifications and such other documents as may be specified as follows:

12.1.2.1. The documentation, which shall be attached hereto as Exhibit D and made a part hereof by reference, shall include budgeted amounts for each of the separately priced divisions of the Work required for the Project and a contingency amount (the Contingency) for the sole use of the CM. The Guaranteed Maximum Price is for the total cost of the Project and not the cost for each or any division of the Project, unless otherwise specified.

12.1.3. The documentation shall be prepared by the CM and submitted to the Owner with the Guaranteed Maximum Price. The documentation may include drawings, sketches, specifications, calculations, or other data used to identify the basis of the Guaranteed Maximum Price.

12.1.3.1. As the separate contracts, purchase orders or other fixed contract prices are obtained and are awarded for each of the separately priced divisions of the work required for the Project as shown in the Project and Construction Budget, the Guaranteed Maximum Price and the Project and Construction Budget shall be adjusted as follows:

12.1.3.2. If the cost of any division as awarded is less than the amount shown on the Project and Construction Budget, as determined in accordance with the terms of this Agreement, the amount indicated in the Project and Construction Budget for such item shall be reduced by an amount equal to the difference between such cost and the amount shown on the

Project and Construction Budget for such item and the Contingency shall be increased by the same amount;

12.1.3.3. If the cost of any division is greater than the amount shown in the Project and Construction Budget to the extent that the Contingency is sufficient, the amount shown in the Project and Construction Budget for such item shall be increased by an amount equal to the difference between such cost and the amount shown in the Project and Construction Budget for such item and the Contingency shall be reduced by the same amount. The Guaranteed Maximum Price shall not be adjusted; and

12.1.3.4. If the Owner and the CM mutually agree for the CM to award a contract to a bidder other than the lowest responsible and responsive bidder for any portion of the Project, the Guaranteed Maximum Price shall be increased by the amount of the difference between the award price and the price submitted by the lowest responsible and responsive bidder. The Contingency shall not be changed;

12.1.4. The Guaranteed Maximum Price when established for the Project, shall be made a part of Exhibit B by change order). This Guaranteed Maximum

Price is for the work described in Exhibit B and as supported by the documentation attached as Exhibit D.

12.1.5. In the event that the cost of the Project exceeds the Guaranteed Maximum Price, and any adjustments therein as may be due pursuant to the terms hereof, the CM shall continue to perform at no additional cost to the Owner until the Project, defined by this Agreement and all Attachments hereto complete. The CM shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Project, even if such amounts are in aggregate in excess of the Guaranteed Maximum Price.

12.1.6. In the event that the cost of the Project is less than the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the amount of the under run shall be shared between the Owner and the CM in the following proportions: to be detailed in the Guaranteed Maximum Price (GMP) Proposal.

(Remainder of the page is intentionally left blank.)

This Agreement is executed the day and year first written above.

OWNER:

[Click here to enter text.](#)

CONSTRUCTION MANAGER:

[Click here to enter text.](#)

Title: [Click here to enter text.](#)

Title: [Click here to enter text.](#)

Attest: _____

Attest: _____

SAMPLE CONTRACT