



Morrisville

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**Request for Qualifications  
The Gables at Town Hall Commons  
Street Improvements Program  
Using the Design-Build Method**

Qualified organizations are invited to respond to the Request for Qualifications (RFQ) entitled:

“The Gables at Town Hall Commons Street Improvements Program”

Submittals must be received by **March 30, 2026 no later than 2:00 p.m. (Eastern Standard Time)** and should be sent to:

*Karen Bass, Purchasing & Contracts Manager  
Town of Morrisville  
100 Town Hall Drive  
Morrisville, NC 27560*

[bids@morrisvillenc.gov](mailto:bids@morrisvillenc.gov)

Any requests for technical clarification or additional information regarding this RFQ shall be submitted via email and directed to Kitty Thomas – Capital Projects Manager at [bids@morrisvillenc.gov](mailto:bids@morrisvillenc.gov)

**DATE ISSUED  
February 27, 2026**

**Table of Contents**

I. Owner Description ..... 3

II. Overview of Project ..... 4

III. Procurement Process ..... 6

IV. Content and Format of Proposal Package ..... 6

V. Questions and Clarifications ..... 10

VI. Statement of Qualifications Submittal ..... 10

VII. Selection Process ..... 11

VIII. Evaluation Criteria ..... 11

APPENDIX A – Programming Documents and Project Scope / Design Criteria

APPENDIX B – General Contract Terms and Conditions

APPENDIX C – Historically Underutilized Business Program (HUB)

APPENDIX D – Proposed Contract Documents

APPENDIX E– Geotech Report

APPENDIX F – Stormwater Inspections Memo

## **Public Notice**

The Town of Morrisville (as referred to as “the Town”) is soliciting Statement of Qualifications from qualified Design-Build team(s) or firms(s) interested in providing professional design and construction services to the Town for the design and construction of The Gables at Town Hall Commons Street Improvements Program.

All respondents to this Request for Qualifications (RFQ) are subject to the instructions communicated in this document and are cautioned to completely review the entire RFQ and follow instructions carefully.

## **I. Owner Description and Project Site**

### **General**

The Gables at Town Hall Commons Street Improvements Program consists of roadway pavement and associated sidewalks within the public right-of-way within the complex. This includes the roads: Meeting Hall Drive, Bell Tower Way, Courthouse Drive, Mayors Place Drive, Founders Walk Drive, and Old Corner Drive, as further depicted in figure 1 below.



*Figure 1 - Project Location Plan*

## II. Overview of Project Scope

### Background

The streets and sidewalks were originally constructed by the developer and were accepted by the Town in 2013. Portions of the roadway and sidewalks exhibit signs of degradation.

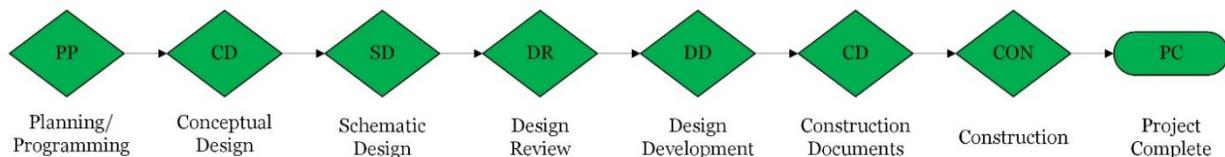
### Program

Exhibit A includes the program requirements

This program is based on input from the Town of Morrisville Engineering Department, HOA Board, and HOA Property Manager.

### Design

The Design-BUILDER is expected to interface with the Town’s project stakeholders through the following steps of design, construction, and handover of the renovated roadways and sidewalks within the Gables at Town Hall Commons complex. Prospective stakeholders include the Town Engineering and Development Services Department, Public Works Department, Town Fire Marshal, HOA Board, HOA Property Manager, and others as needed. The Town’s Engineering Design and Construction Manual (EDCM) and Unified Development Ordinance (UDO) shall be considered from the start of the design phase of the project.



The Design Review step is further described in the Town’s Inspections Webpage under the Development Review Process Chart. This is basically the Site Plan Pre-Submittal Meeting to verify what needs to be included in the construction documents for permitting review and approval.

### Project Objectives

The project objectives include but are not limited to:

- Establishing a collaborative relationship between the Town and the Design-Build team for the purpose of delivering a well-designed project that meets the needs of the Gables residents and the Town.
- Deliver the project according to the agreed upon time frame.
- Complete the project work within the established budget.

### Scope of Work

The scope of work will include but is not limited to the following:

- Project planning to include code analysis, value engineering options, preliminary

- cost estimates, and schedule development.
- Evaluation of the existing site conditions.
- Collection of any necessary design information, such as topographic survey and geo-technical evaluations, and existing utilities. Secure any new or additional studies to address data gaps.
- Design process will include interfacing with the Town to refine project criteria.
- Construction plan approvals through Town of Morrisville Engineering/Development Services.
- Construction of the project.
- Project management to assure the team is performing to design and project specifications.
- Schedule management to assure on-time completion.
- Cash flow forecasting throughout the duration of the project.
- Weekly on-site meetings with Town staff for updates.
- Project closeout, commissioning, delivering manuals, establishing warranties, final inspection and acceptance, execution of punch list and record drawings.

The firm/team assumes design and construction risk and has direct authority over the sub-consultants and subcontractors. The firm/team will act as the Town's fiduciary and have a relationship of trust and confidence between itself and the Town. The Town intends to enter into a Design-Build Agreement with the selected Design-Build firm that will include a proposed contract price for the design and construction of the Project. The contract price shall be in the form of a lump sum or the cost of the work plus a fee with an option for a Guaranteed Maximum Price ("GMP").

### **Funding and Anticipated Budget**

Funding in the amount of \$2.6 million has been budgeted and approved by the Town Council to design, oversee, and construct the desired improvements.

### **Project Schedule**

<u>Date</u>	<u>Event</u>
February 27, 2026	Advertise Request for Qualifications
March 10, 2026	Pre-submittal conference for interested teams at Town Hall
March 23, 2026	RFQ clarification questions deadline
March 30, 2026	Statement of Qualifications deadline
April 2026	Town notifies shortlisted firms/teams
April 2026	Town conducts interviews with shortlisted firms/teams
May 2026	Town negotiates contract with selected firm/team
May 2026	Begin progressive design build phase
November 2026	Project substantial completion and beneficial use

Note: The anticipated schedule provided above is based on available information at the time of this document. Further clarification will be provided to the selected firm/team.

### **III. Procurement Process**

#### Request for Qualifications (RFQ):

- This RFQ is an invitation to interested Design-Build Teams to submit Statements of Qualifications (SOQ) detailing their technical, management, and financial qualifications to design, manage, permit, construct, commission, and closeout the improvements.
- The deliverables required by the RFQ are set forth in section IV.
- Procedures related to questions and clarifications are set forth in section V.
- Submittal requirements for the SOQ are set forth in section VI.
- The Town will evaluate the submissions as outlined in section VII.
- The SOQ will be evaluated according to the evaluation criteria listed in section VIII.
- No more than three teams/firms will be selected as short list firms, who will be invited for interviews with Town staff.
- The results of the evaluation of the SOQ can be considered in the final selection process.
- Any cost incurred by respondents in preparing or submitting a proposal for the project shall be the respondent's sole responsibility.

#### Interviews for Short Listed Firms/Teams:

- The Town may contact up to three firms/teams and schedule an interview.
- The purpose of the interview will be to clear up any questions or issues with the SOQ and to assess how the team will work with Town staff.
- The interview will also serve as a place for Town staff to ask further questions designed to establish which of the firms is the best fit for the project.
- The interview process will determine the final rankings prior to selection of a firm/team.

#### Contract Negotiations:

- The Town will enter negotiations with the top scoring firm/team after the interview process.
- If an agreement cannot be reached with the top scoring firm/team, the Town will move on to the next highest scoring firm/team until a contract is executed, or the Town, in its sole discretion, may decide to terminate the selection process.
- If the Town is unsuccessful in receiving a price proposal within the identified budget, the Town may decide to terminate the selection process.

### **IV. Content and Format of Proposal Package**

Firms submitting SOQs shall have no association with elected or appointed officials that could be considered a conflict of interest. Any such relationship will subject the firm to immediate disqualification in consideration for this project. Town staff will evaluate the SOQs and will invite the most qualified firms/teams to interview with town staff prior to

recommending a firm/team.

A written proposal must be submitted in the format outlined herein. Each proposal will be reviewed to determine if it is complete prior to actual evaluation. The submission shall be limited to a maximum of 20 pages (8 1/2" X 11, font size 10 or larger). This page limit includes tabs and other dividers. Stick-on tabs are allowed. You may include a 1-page cover letter in addition to the 20-page report. Double-sided pages count as 2 pages. Reference forms will not count towards the page limit.

The SOQ shall consist of the following information, tabbed as identified and in the following order:

Section 1 – General Information

- Description of firm/team
  - Legal company organization; organization chart with names. Organizational chart shall also include major subcontractors.
  - Provide an explanation of the project team selection, which shall consist of either of the following:
    - a) A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design-builder proposes to use for the project's design and construction. If this project team selection option is used, the design-builder may self-perform some or all of the work with employees of the design-builder and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with subcontractors, including, but not exclusively with, those identified in the list. In submitting its list, the design-builder may, but is not required to, include one or more unlicensed subcontractors the design-builder proposes to use. If this project team selection option is used, the design-builder may, at its election and with or without the use of negotiated subcontracts, accept bids for the selection of one or more of its first-tier subcontractors.
    - b) A list of the licensed contractors and design professionals whom the design-builder proposes to use for the project's design and construction and an outline of the strategy the design-builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes. If this project team selection option is used, the design-builder may also self-perform some of the work with employees of the design-builder, but shall not enter into negotiated contracts with first-tier subcontractors.
  - The Applicant shall certify that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.
  - No substitutions to “key personnel” of the proposed project team of the selected firm(s) can be made without the prior written approval of the Town. For purposes of this subsection, “key personnel” shall mean either of the following: (1) For the project team selection option a. of this section,

the licensed contractors, licensed subcontractors, and design professionals identified in the response to the request for qualifications. (2) For the project team selection option b. of this section, the licensed contractors and design professionals identified in the response to the request for qualifications.

#### Section 2 – Relevant Firm Experience

- Applicant's overall reputation, service capabilities and quality as it relates to this project.
- List and briefly describe 3-5 comparable projects completed by your firm/team or currently in progress; include your firm's role, and discuss contract amendment history, if applicable. For each project, include the following information:
  - Contract value and construction value (original value plus contract amendments, if applicable)
  - Project owner
  - Project location
  - Type and amount of self-performed work.
  - Contact name and title, address, current and accurate telephone number, fax number, and email address (if available).
  - The initial contract price, final contract price, and an explanation for any difference between the two.
  - The initial dates for scheduled start and finish and the actual start and finish dates, along with an explanation of what caused any difference.
- A minimum of three referrals and references from other agencies and owners. If possible, references should be from the projects listed above.

#### Section 3 – Team Member Experience & Qualifications

- Describe each team member's position within the firm: experience, certifications, and qualifications. At a minimum the lead designer, project manager, and construction manager, should be identified and available for interview if the firm/team is short listed.
- Briefly describe each team member's role on this project.
- Provide "team" experience working together on similar projects.
- Explain your understanding of, and experience with, the Design-Build Delivery Method.
- Provide information regarding teaming history and working relationship between the Design-Build licensed contractor(s) and licensed design professional(s).

#### Section 4a – Project Understanding, Approach & Project Management

- Describe your understanding of the project.
- Identify and discuss any potential problems you might anticipate during design and construction.
- Identify and discuss methods to mitigate those problems.
- Describe the work you anticipate self-performing, and the work you anticipate being performed by sub-consultants/subcontractors. Discuss access and capacity of the sub-contractors as well as the subcontractor's history with your firm/team

and their qualifications.

- Describe approach to coordination with vendors for startup, training, and warranty compliance.
- Describe your understanding of the Project Budget and approach to change orders.
- Describe your planning, scheduling, estimating, and construction management tools.
- Describe your quality control plan and dispute resolution.

#### Section 4b – Schedule

- The SOQ shall include a proposed schedule for the project.
- The project timeline requires substantial completion of the roadways, storm water drainage, and sidewalks before the end of 2026. Given the scope of work, identify and discuss ideas to minimize the duration of design and construction to meet this timeline, and to accelerate the overall schedule.
- Major milestones should be identified. The submission should demonstrate that the team/firm understands the Town’s timeline and shares the Town’s sense of urgency given the desired schedule. The proposed schedule should demonstrate consideration for typical weather conditions of Morrisville, NC over the timeframe of the project and include a variance for unforeseen circumstances.

#### Section 5 - Other Factors

- Describe approach to safety management. Provide current safety ratings, practices, and firm approach to safety. Note, proposers are directed not to submit full safety plans, however, the Town may request a copy of safety plans if deemed necessary for the selection process or project implementation.
- Explain capacity to handle this project along with other projects without disruption on the Towns schedule. This should include a description of current and projected workload as it relates to the team’s ability to complete the project in a timely manner including level and magnitude of involvement.
- Provide statement regarding your assurance that this engagement will not result in a conflict of interest.
- A description of any program in place to encourage participate by minority businesses as such is defined in N.C.G.S. § 143-128.2(g) and the outreach efforts which will be used to notify minority businesses of opportunities for participation in the project. **Compliance with the Town’s HUB Policy is required – see Appendix C.**
- Relevant factors impacting the quality and value of work.
- Any other information pertinent to the team’s ability to complete the project.

#### Section 6 – Legal

*No points will be allocated for Evaluation Criteria No. 6; Proposers will be rated as acceptable (pass) or unacceptable (fail).*

- List and describe any litigation; arbitration; claims filed by your firm against any project owner as a result of a contract dispute; any claim filed against your firm; termination from a project.

- List any pending or settled lawsuits or professional liability claims in which the design builder was involved during the past ten (10) years. All claims shall be included regardless of location.

## V. Questions and Clarifications

For the purpose of providing clarifications, a pre-submittal conference will be held at 11:00 AM (EST) on March 10, 2026, at Town Hall, 100 Town Hall Dr, Morrisville, NC 27560. Attendance for those intending to submit qualifications is encouraged. The project will be described, and key Town participants will be introduced. Pre-submittal conference questions should be submitted in writing prior to the meeting. Questions that arise during the pre-submittal conference must also be submitted in writing. Only written questions will be answered in an addendum.

All questions shall be submitted to Kitty Thomas, Capital Projects Manager, via email (bids@morrisvillenc.gov), no later than 1:00 p.m. (EST) on Monday, March 23, 2026. Questions submitted later than this deadline will not be considered. An addendum with questions and answers, if necessary, will be provided to teams/firms.

All responses, inquiries, or correspondence relating to this RFQ will become the property of the Town of Morrisville. Respondents shall not seek individual contact or information except by the method allowed in this request. Individual requests for discussions with Town staff or persons associated with this project are prohibited and can be considered grounds for disqualification. All questions properly submitted will be answered in writing and distributed to all interested parties in a timely manner in the form of an addendum.

## VI. Statement of Qualifications Submittal

All submittals must be submitted via email in PDF format only. Hard copies will not be accepted. Submittals are due no later than 2:00 PM on March 30, 2026. No submittals will be accepted after this time. It is the responsibility of the Respondent to ensure and confirm that submittal is received prior to the deadline.

All submittals shall be addressed to the attention of Karen Bass, Purchasing and Contracts Manager and delivered electronically to the following email address:

Attn: Karen Bass, Purchasing & Contracts Manager  
Bids@morrisvillenc.gov

\*Subject line of email should read: **RFQ for The Gables at Town Hall Commons Street Improvements Program** \*

All proposal packages and materials submitted hereunder become the exclusive property of the Town and shall be subject to the provisions of the North Carolina public records laws.

The Town of Morrisville reserves the right to reject any or all packages received or to

request additional information as may be needed to determine qualifications.

### **VII. Selection Process**

This RFQ provides information necessary to prepare and submit qualifications for consideration and ranking by the Town. It is the intent of the Town to appoint a selection committee to review the submitted Statements of Qualifications. This committee will review each qualification submittal and rank the submittal based on the criteria requirements specified within this RFQ. The Town may invite up to three teams/firms for interviews. Companies are hereby notified that the interview process will quickly follow the submittal deadline and firms should prepare their submittal and proposed team accordingly. Elaborate presentations and submittals during the interview process are not expected or requested. Each interview will last no more than 1 hour with 30 minutes allowed for a presentation and a 30-minute question and answer session. At the conclusion of the interviews the selection committee will rank the firms based on the selection criteria and the interviews. The Town anticipates providing written notification to all firms regarding final **selection in April 2026**.

Upon completion of the selection process, the highest ranked firm will be asked to submit a fee proposal to begin contract negotiations for a fair and reasonable price. By submitting its Statement of Qualifications in response to this RFQ, respondents accept the evaluation process as outlined in the following section and understand, acknowledge, and accept that determination of the “most qualified” firm may require subjective judgments by the Town.

Timely completion is a priority on this project. Preferred consideration will be given to teams that are able to deliver the project within the expected timeline. Success record on this particular aspect must be clearly reflected on the submittal.

### **VIII. Evaluation Criteria**

1. General information about the Team/Firm (required)
2. a) Relevance of experience of the Team/Firm with design build projects with weighted consideration for paving and roadway repair projects  
b) References from similar previous projects
3. Team experience and qualifications
4. a) Project approach, understanding, and management  
b) Schedule approach
5. Other Factors
6. Financial & Legal (required)

Any requests for clarification or additional information of a technical nature regarding this RFQ shall be submitted via email to Kitty Thomas – Capital Projects Manager at [bids@morrisvillenc.gov](mailto:bids@morrisvillenc.gov).

# APPENDIX A

PROGRAMMING DOCUMENTS

and

PROJECT SCOPE / DESIGN CRITERIA

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## Exhibit A – The Gables at Town Hall Commons Street Improvements Program Criteria

### **INTRODUCTION**

The Gables at Town Hall Commons Street Improvements is to be designed and constructed to improve pavement quality, drive ability, drainage and address any roadway failures.

### **PROGRAMMING**

These Program Criteria are to be further discussed, confirmed, and possibly refined during the Phase 1 / Due Diligence and Preliminary Design Phase Services.

#### Material Quality Standards or Performance Criteria

All materials used and equipment installed as part of this project are to be new and considered commercial grade. No seconds or refurbished equipment will be accepted.

#### Special Material Requirements

Design process shall include consideration of materials and construction methods that will increase the level of sustainability and environmental stewardship.

The Design-Builder shall provide waste disposal metrics to account for the recycling of Construction and Demolition debris. The Town has a minimum 70% recycling objective.

#### Provisions for Utilities

The Design-Builder is required to collaborate with all necessary utility providers to design and modify any needed utility connections and services to provide a turnkey project upon completion.

#### Government's Rules, Ordinances, or Goals

All design and construction must comply with the Town of Morrisville requirements. Reference [Unified Development Ordinances UDO Adopted Version July 2024](#), Town of Morrisville Engineering Design and Construction Manual (EDCM) located here: [Engineering Department | Town of Morrisville, NC](#) and any other local, state or federal guidelines applicable to the project.

The Design-Builder shall address the Town's Strategic Plan Objectives and applicable Town Policies and Standards during the design, construction, commissioning, and handover of the facilities:

[Strategic Planning & Performance Management](#)

[Strategic Plan](#)

[Sustainable Practices and Initiatives – Public Works](#)

## Exhibit A – The Gables at Town Hall Commons Street Improvements Program Criteria

### **Program functional requirements**

#### **Pavement**

Overall goal is to improve the PCI (Pavement Condition Index) of every street in the complex from its current state to a new value greater than 90.

Address areas of pavement failures: settlement, subbase failures, raveling, cracking, etc.

Address areas where crown and slopes can be corrected to improve ride quality and drainage.

The Geotechnical report is provided as Appendix E.

#### **Sidewalks**

Address any vertical displacements greater than ¼", significant cracking, or settlement.

Replacements shall conform to current requirements and standards; tie-in points shall not exacerbate any existing non-conformities.

Identify and coordinate with the town on Right-of-entry or easement needs

#### **Drainage**

Storm drain repairs as detailed in Appendix F (Stormwater Inspections Memo)

Address any damaged curb and gutter

Final design and installation shall result in no water ponding on the roadway and sidewalks 30 minutes following a typical rain event. Existing storm water drainage from the yards (common areas), which passes over the sidewalk and into the street shall not be impaired, and opportunities for improvements shall be investigated for consideration.

#### **Accessibility**

Provisions shall be made to ensure emergency (police, fire, EMS, etc.) and ADA compliant pedestrian access is always available to the residences within the complex during construction activities.

Residential driveways shall not be encumbered or inaccessible for the resident for a period exceeding 120 hours (5 days).

Essential services like postal, waste/recycling pickup, and school bus pick up should be coordinated as need to not create service interruptions

Roadway sections shall not be encumbered or inaccessible for the resident for a period exceeding 7 days. No more than 25 houses shall be encumbered at a time for each encumbered roadway section.

Displaced residential driveway parking shall be made available within the complex.

## **Exhibit A – The Gables at Town Hall Commons Street Improvements Program Criteria**

### **Communications**

The Design-Builder shall implement a consistent communication plan with the property manager to alert and advise residents of upcoming design and construction activities, including planned encumbrances to roadways, driveways, sidewalks and regular updates up to and including when the areas are finished and ready for traffic to resume. This shall include but not limited to communications such as information for website posting, door hangers, letters, and signage.

The Design-Builder shall provide a 24-hour access phone number for the HOA property manager or the Town of Morrisville to reach in case of emergency.

### **Dust, Noise, and Vibration**

The Design builder shall implement a work plan that will minimize noise, vibration, and dust.

# APPENDIX B

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**GENERAL TERMS AND CONDITIONS**

The selected firm (AKA Design-Builder) will be notified by the Town and will enter into contract negotiations with Morrisville.

The Town proposes utilizing the following documents as a basis of the Design-Build Agreement

- Modified Form of DBIA Document No. 544 Progressive Design-Build Agreement
  - Modified Form of DBIA Document No. 535 General Conditions of Contract Between Owner and Design-Builder
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# APPENDIX C

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# **Town of Morrisville North Carolina**



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## **Historically Underutilized Business (HUB) Program**

# TABLE OF CONTENTS

	Page
<b>INTRODUCTION.....</b>	<b>3</b>
<b>POLICY STATEMENT.....</b>	<b>4</b>
<b>OBJECTIVES.....</b>	<b>5</b>
<b>DEFINITIONS.....</b>	<b>6-7</b>
<b>PROGRAM ADMINISTRATION</b>	
<b>Owner Responsibilities.....</b>	<b>8-9</b>
<b>Designer Responsibilities.....</b>	<b>9</b>
<b>Contractor Responsibilities.....</b>	<b>10</b>
<b>Historically Underutilized Business Responsibilities.....</b>	<b>11</b>
<b>Calculating Historically Underutilized Business Participation.....</b>	<b>11</b>
<b>Monitoring Historically Underutilized Business Program Activity....</b>	<b>12</b>
<b>Penalties.....</b>	<b>12</b>
<b>CONTRACT COMPLIANCE REQUIREMENTS</b>	
<b>Compliance Requirements.....</b>	<b>14</b>
<b>Bid Submittal Requirements.....</b>	<b>15-16-17</b>
<b>Good Faith Efforts.....</b>	<b>18</b>
<b>Documentation Forms.....</b>	<b>19-27</b>

## INTRODUCTION

The General Assembly adopted the provisions of Senate Bill 308 which amended G.S. 143-128 allowing all public owners to advertise for bids for public building projects using single contract (single prime) system as an alternative to the traditional separate (multi-prime) contracts system. **Included in the amendments adopted by the General Assembly was the requirement that each public owner adopt and implement a Minority and Women's Business Enterprise (M/WBE) Plan that would include specific conditions to be met for each public building project constructed under the provisions of G.S. 143-128.**

The intent of these amendments was and still is to increase the opportunities for M/WBEs to become involved in public building projects let to contract in North Carolina. Within the guidelines of Senate Bill 308 was the requirement that each public body adopt an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for which a contract or contracts are awarded.

Each local government was given the responsibility for ascertaining their own appropriate verifiable percentage goal(s). On January 26, 2004, the Town of Morrisville Board of Commissioners established a goal of ten percent (10%) for minority participation in building construction contracts awarded that meet the statutory threshold of \$300,000.

The Town of Morrisville's Historically Underutilized Business (HUB) Program includes the following goals:

- 1) Establish a 10% HUB overall participation percentage goal in the building construction projects meeting the statutory formal bid threshold expenditure level, and
- 2) Establish a 10% HUB overall participation percentage goal in the procurement of consulting and professional expenditures related to building construction projects meeting the statutory formal bid threshold expenditure level.
- 3) The overall program participation percentage goal will be reviewed annually or on a project by project basis as soon as relevant data becomes available.
- 4) Historically Underutilized Businesses will have an opportunity to receive technical assistance in licensing, bonding, certification, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing Town contracts.

**The services of the Town of Morrisville's Underutilized Business Program is not designed to provide in-depth business management, estimating or other technical assistance to participants in bid preparation and contract negotiations.**

# OUTREACH PLAN AND GUIDELINES

## FOR RECRUITMENT AND SELECTION OF HISTORICALLY UNDERUTILIZED BUSINESSES FOR PARTICIPATION IN THE TOWN OF MORRISVILLE'S BUILDING CONSTRUCTION CONTRACTS

In accordance with G.S. 143-128.2, effective January 26, 2004, these guidelines establish goals for Historically Underutilized Business (HUB) participation in single-prime bidding, separate-prime bidding, dual bidding, construction manager-at-risk, and alternative contracting methods on Town of Morrisville building construction projects in the amount of \$300,000 or more. The Outreach Plan shall also be applicable to the selection process of architectural, engineering and construction manager-at-risk services.

The Town of Morrisville has a verifiable ten percent (10%) goal for Historically Underutilized Business (HUB) participation by HUB businesses in the total value of work for each project for which a contract or contracts are awarded for public building construction. The overall goal will be reviewed annually or as soon as relevant data is available.

### POLICY STATEMENT

To broaden opportunities for participation, increase competition, and ensure the proper diligent use of public funds, it is the intent of the Town of Morrisville to provide minorities and women equal opportunity to participate in all aspects of the Town of Morrisville's contracting programs. Opportunities include, participation in construction and construction renovation projects, and lease agreements as they relate to requirements established by federal, state, and local governments.

The Town of Morrisville is committed to economic development of small business enterprises and the minority community and prohibiting discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, national origin, age, disability, or veteran status.

The Town of Morrisville's Historically Underutilized Business Program (HUB) is not a set-aside program as it relates to contracting, it is a voluntary goal program. Competitive bidding is required for all contractors, subcontractors, suppliers and distributors. The HUB program encourages contractors to actively and aggressively seek HUB participation.

**Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from HUB contractors or HUB subcontractors who do not submit the lowest responsible responsive bid or bids.**

It is further the intent of these guidelines that the Town of Morrisville, as awarding authority for construction projects, and the contractors and subcontractors performing the construction contracts awarded, shall cooperate, and in good faith do all things, legal, proper and reasonable to achieve participation by HUB in each construction project as mandated by N.C.G.S. 143-128.2.

## **OBJECTIVES**

The primary objective of the Town of Morrisville Historically Underutilized Business Program will be to focus on full utilization of minority and women businesses in the Town 's construction activities; the assurance of a Good Faith Effort Program that benefits contractors, subcontractors and vendors alike; and early conflict intervention of general and discriminatory concerns in addition to the following areas of assistance:

- ◆ Maintain and promote minority-owned and women-owned business utilization.
- ◆ Increase the Town of Morrisville's knowledge of minority and women owned business firms and become familiar with their product line.
- ◆ Provide up-to-date information on Town bidding opportunities.
- ◆ Management and technical assistance guidance and support throughout the process to ensure significant minority and female business participation.
- ◆ HUBs will have an opportunity to receive technical assistance in licensing, bonding, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing Town contracts.
- ◆ Provide and administer procedures for reporting and monitoring compliance of contract activity, subject to the provisions of the HUB requirements of the Town of Morrisville.
- ◆ Provide and administer procedures for resolving complaints of discrimination made against businesses holding construction contracts with the Town of Morrisville.

## **DEFINITIONS**

- **Bidder**  
Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
  
- **Certification**  
Effective July 1, 2009, all HUB must be certified by the State of North Carolina at website <http://www.doa.nc.gov/hub/>.  
To qualify for certification, a firm must meet the definition of a minority person, as outlined in accordance with N.C.G.S. 143-128, and/or be socially and economically disadvantaged as defined in 15 U.S. C. 637 of the Federal Code.  
Any person having a current 8(a) certification from the Small Business Administration is considered socially and economically disadvantaged.
  
- **Construction Contract, Project or Program**  
A contract or project entered into by the Town of Morrisville for building construction or repair work involving the expenditure of public funds in the amount of \$ 300,000 or more.
  
- **Contractor**  
Any person, firm, partnership, corporation, association, or joint venture, which has contracted with the Town of Morrisville to perform construction, work or repair.
  
- **Designer**  
Any person, firm, partnership, or corporation, which has contracted with the Town of Morrisville to perform architectural or engineering work.
  
- **Hub Program Administrator**  
Owner's representative responsible for administering the Town's Historically Underutilized Business Program
  
- **Minority**  
A person who is a citizen or lawful permanent resident of the United States and who is:
  - a. American Indian, that is, a person having origins in any of the original peoples of North America
  - b. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands
  - c. Black, that is, a person having origins in any of the black racial groups in Africa
  - d. Female
  - e. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central American, or the Caribbean Islands, regardless of race
  - f. Persons qualifying as socially or economically disadvantaged
  
- **Minority Business**
  - a. A business in which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and

- economically disadvantaged individuals; and
- b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

- **Socially and economically disadvantaged individual**

Means the same as defined in 15 U.S.C. 637 of the Federal Code.

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regards to their individual qualities.

Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

- **Owned and Controlled**

A business which is (1) a sole proprietorship legitimately owned by an individual who is a minority or female, (2) a partnership or joint venture controlled by minorities and/or females, or (3) a corporation or other entity controlled by minorities and/or females and in which at least 51% of the voting interests and 51% of the beneficial ownership interests are legitimately held minorities and/or females. These persons must control the management and operation of the business on a day-to-day basis.

- **Owner**

Town of Morrisville.

- **Public Entity**

State and all public subdivisions and local government units.

- **Subcontractor**

A firm under contract with the prime contractor or Construction Manager-at-Risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in the subcontract.

- **Verifiable Goal**

The Town of Morrisville has adopted written guidelines specifying the actions that will be taken to ensure a Good Faith Effort in the recruitment and selection of female and minority businesses for participation in contracts awarded.

## PROGRAM ADMINISTRATION

### Responsibilities of the Owner

1. Develop, implement, manage, and monitor for compliance, the Town of Morrisville’s Historically Underutilized Business (HUB) Outreach Plan, as contained herein, in accordance with federal, state, and local government requirements.
2. Work with minority-focused and small business groups that support Historically Underutilized Business and small business inclusion in the solicitation of bids.
3. Place more emphasis on the importance of soliciting certified Historically Underutilized Business firms and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from HUB firms.
4. Hold meetings with the majority contractors to provide detailed information concerning the Guidelines for Recruitment and Selection of Historically Underutilized Business, information on G.S. 143-128 and G.S. 143-129, and to ensure that solicitations contain the clauses and goals required by the program.
5. Explain the Town of Morrisville’s Historically Underutilized Business participation requirements at pre-bid conferences.
6. Assess the effectiveness of the HUB Program, and identify opportunities to enhance it, by evaluating HUB participation and compliance and reviewing *the* “Good Faith Efforts” provided in bid packages.
7. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified HUB firms and small businesses that have expressed an interest in Town of Morrisville projects.
8. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration no later than 10-days prior to the bid opening.
  - a. A description of the work for which the bid is being solicited.
  - b. The date, time and location where bids are to be submitted.
  - c. The name of a representative of the Owner who will be available to answer questions about the Project.
  - d. Where bid documents may be received.
  - e. Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.
9. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how their Outreach Program and HUB program is working and sharing “*best practices and ideas*” to improve the program.
10. Participate in education opportunities throughout the community as they become available and offer training sessions to share the Town of Morrisville’s Outreach Plan with interested businesses and organizations.

11. On-going Communications Program.

Upon request, the Town of Morrisville will make available complete information on the Town 's construction programs and projects and a brief description of each to HUBs, HUB associations, assistance agencies, and training resources. A copy of this list will be maintained in the office of HUB Program Administrator.

All bid notices for construction projects over \$500,000 will be advertised in a daily newspaper having general circulation in the area for which bids are requested. The Town will ensure that bid notices are made available to HUB trade associations, minority economic development groups and HUBs with capabilities relevant to the bid notices as identified by the HUB Source Listing.

Historically Underutilized Businesses will have an opportunity to receive technical assistance in licensing, bonding, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing Town contracts. The HUB Program Administrator shall be responsible for coordinating this information.

12. Advertise upcoming bid opportunities in minority-focused media, if available.

13. Work with architects, consultants, and engineers to ensure that subcontracting opportunities are more noticeable, that specific opportunities are identified and easily understood by potential contractors and subcontractors.

14. Provide reports to the North Carolina State Department of Administration, minority participation, as contained herein.

**Designer**

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

1. Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversations with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) – (i.e. bidder's proposal for identification of the minority businesses that will be utilized with corresponding dollar value of the bid and Affidavit Listing Good Faith Efforts or Affidavit of Self-Performance of Work, if the contractor will perform work under contract by its own workforce) – prior to recommendation of an award.
5. During the construction phase of the project, review "HUB Documentation for Contract Payment" form with monthly pay applications to the owner and forward copies to the Town of Morrisville.

## **Prime Contractor(s), Construction Manager-At Risk, and its First-Tier Subcontractors**

Under the single-prime bidding, the separate-prime bidding, dual bidding, Construction Manager-at-Risk and alternative contracting methods, contractor(s) must do all of the following:

1. Attend the scheduled prebid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. At least ten (10) days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of the following:
  - (a) A description of the work for which the subbid is being solicited.
  - (b) The date, time and location where subbids are to be submitted.
  - (c) The name of the individual within the company who will be available to answer questions about the project.
  - (d) Where bid documents may be reviewed.
  - (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.
4. During the bidding process, comply with the contractor(s) requirements listed in the proposal for minority participation.
5. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and Affidavit Listing Good Faith Efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f) or Intent to Perform Contract With Own Workforce Affidavit.
6. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First Tier Subcontractor responsibilities available for review by Town of Morrisville upon request.
7. Provide one of the following upon being named the apparent low bidder: (1) an Affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. This affidavit shall give rise to a presumption that the bidder has made the required good faith effort; or (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
8. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
9. Submit with each monthly pay requests(s) and final payment(s), "HUB Documentation for Contract Payment" for designer's review.
10. If at any time during the construction of a project, it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.

11. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

### **Historically Underutilized Business (HUB) Responsibilities**

Minority businesses are required to become certified in order to participate in the Town of Morrisville's construction projects. Certified business can take advantage of the appropriate technical assistance that is made available. Minority businesses who are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

Historically Underutilized Businesses will have an opportunity to receive technical assistance in licensing, bonding, certification, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing Town contracts.

Only those firms holding current certification through the following agency will be considered eligible for inclusion in meeting the HUB participation percentage goals:

- North Carolina Administration Department  
Historically Underutilized Business (HUB) Certification  
<http://www.doa.nc.gov/hub/>

A copy of these guidelines will be issued with each bid package for Town of Morrisville building construction projects. These guidelines shall apply to all contractors regardless of ownership.

### **Calculating Historically Underutilized Business (HUB) Participation**

The degree of participation by HUB subcontractors, minority-majority joint ventures, and HUB contractors in contracts awarded will be calculated as follows:

1. The total dollar value of the contract awarded to the HUBs.
2. The total dollar value of purchases of equipment or supplies from HUBs.
3. Participation by HUBs by race and gender classification.

### **Monitoring Historically Underutilized Business (HUB) Program Activity**

In order to monitor the implementation of the HUB policy to provide minorities and women equal opportunity for participating in all aspects of the Town 's construction programs, participation shall be documented by each department of the Town involved in a construction project and reported quarterly to the HUB Program Administrator. Appropriate forms will be developed and available to all departments.

Responses from departments shall include:

1. The number of solicitations to HUBs
2. The number of bids submitted by HUBs
3. The number of contracts awarded to HUBs
4. The value of contracts awarded the HUBs

### **Penalties**

If the contractor is found to be in non-compliance, with these provisions, such action may be considered by the Town as a basis for not awarding future contracts.



# **Town Of Morrisville**

North Carolina  
Wake County

Historically Underutilized  
Business (HUB) Program

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## **Instructions for Compliance with the Town of Morrisville's Historically Underutilized (HUB) Business Program**

## CONTRACT COMPLIANCE REQUIREMENTS

The Guidelines for Recruitment and Selection of Historically Underutilized Business for Participation in the Town of Morrisville's Contracts are hereby made a part of these contract documents. These guidelines shall apply to all contractors regardless of ownership. Copies of these guidelines may be obtained from:

Physical Address: Town of Morrisville,  
100 Town Hall Drive  
Morrisville NC 27560

Representative: HUB Program Administrator

Mailing Address: P. O. Box 166  
Morrisville NC 27560

Telephone Number: 919-463-6123

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

The Town of Morrisville shall include in all contract specifications specific instructions and procedures to define HUB compliance requirements. Historically Underutilized Business requirements will be reviewed at pre-bid meetings for all potential contractors.

Each contractor proposing to bid a project meeting the requirements of the town's HUB Program shall submit the following information with their bid:

1. Items that will be subcontracted.
2. General list of materials to be used in the project.

A listing of certified minorities and female-owned businesses in the HUB Program is available at : <http://www.doa.nc.gov/hub/>. The list is available to contractors for use in recruiting and selecting HUB subcontractors.

### **Subcontract Goals**

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

## **BID SUBMITTAL REQUIREMENTS**

### **The bidders must submit the following with their bid:**

**1. Affidavit A: Identification of Historically Underutilized Business Participation**

This form illustrates the areas in which the contractor has identified potential HUB subcontract opportunity and the dollar value in which the contractor proposes to attain in HUB utilization.

**2. Affidavit B: Good Faith Efforts**

In accordance with G.S. 143-128.2(c), the purpose of this document is to measure the contractor's "Good Faith Efforts" in the pre-bid stage. It is not the intent of this document to commit the Contractor to subcontracting these areas only to HUB firms or releasing the contractor from negotiating with HUB firms for subcontract opportunities in other areas.

**OR,**

**3. Affidavit C: Intent to Perform Contract With Own Workforce**

This form is to be submitted if the bidder does not intend to subcontract any portion of the work and if there are not any significant material purchases on which HUB firms can be utilized. The bidder must certify that this has been a typical practice on projects of similar scope and dollar value; and provide with his/her bid a list of those projects along with the project name, the owner, the owner's project manager and/or representative, total dollar value, the beginning and completion date.

By submittal of "Intent to Perform Contract with Own Workforce" (Affidavit C) for self-performance", the contractor is certifying that:

1. He/she will not enter into any subcontracts for the duration of the project, and if he/she does decide to subcontract any portion of the work he/she will:
  - a. Notify the Town immediately of the decision to subcontract.
  - b. Adhere to the provision of "Good Faith Efforts" in filling that subcontract opportunity.
2. He/she does not typically subcontract on projects of similar scope and dollar value.

**The Historically Underutilized Business Program may request the apparent low bidder to provide additional information to clarify the bidder's responsiveness.**

**Failure to submit the completed forms with your bid may deem the bid as non-responsive.**

## **After the Bid Opening**

The Town of Morrisville will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon receipt of the Notice/Letter of Intent to Award/Letter of Award, the apparent low bidder will be requested to attend a pre-construction conference at which time he/she will be required to submit the following HUB documentation:

**1. Affidavit D: Portion of the Work to be Performed by HUB Firms**

This form shall be submitted by the apparent lowest responsible, responsive bidder within **72-hours** after notification of being low bidder if the portion of the work to be executed by minority businesses, as defined in **GS 143-128.2 (g)**, is **equal to or greater than 10%** of the bidders total contract.

**OR,**

**2. Affidavit E: If HUB participation **does not** equal or exceed the overall Town goal(s)**

If the percentage is not equal to the applicable goal, provide evidence of **Good Faith Efforts** to meet the goal that include:

- a. Copies of solicitation for quotes to at least three (3) minority business firms from the source list provided for each subcontract to be let under this contract (if three or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contract, and location, date and time when quotes must be received.
- b. Copies of quotes or responses received from each firm responding to the solicitation.
- c. A telephone log of follow-up calls to each firm sent a solicitation.
- d. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- e. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- f. Copy of pre-bid roster.
- g. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- h. Letter detailing reasons for rejection of minority business due to lack of qualification.
- i. Letter documenting proposed assistance offered to minority businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.
- j. The town may require the contractor to submit additional information to verify his/her "Good Faith Efforts".

The HUB documentation will be received at the pre-construction conference and forwarded to the HUB Program Administrator within three (3) working days for a determination of compliance. The HUB Program Administrator will make a determination of compliance within five (5) working days from receipt of the documentation. If the contractor does not submit his HUB documentation at the

pre-construction conference he/she may be deemed to be in non-compliance with the “Good Faith Efforts”. The HUB Program Administrator will notify the contractor of the determination of compliance or non-compliance.

The penalty for non-compliance will be applied against the contract until the contractor is determined to be in compliance with his/her “Good Faith Efforts”.

At the time of the final request for payment upon completion of the project, the Contractor shall submit a Statement of Final Payments to HUB Subcontractors and Suppliers. Final payment will not be released until Statement of Final Payments to HUB Subcontractors and Suppliers form is submitted.

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

## **Good Faith Efforts**

In determining whether a contractor has made Good Faith Efforts, the Town of Morrisville will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. **At least 50 points must be earned from the good faith efforts listed below in order to meet the Good Faith Efforts requirement:**

- (1) **10 points:**  
Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least (10) days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
- (2) **10 points:**  
Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
- (3) **15 points:**  
Breaking down or combining elements of work in economically feasible units to facilitate minority participation.
- (4) **10 points:**  
Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and those included in the bid documents to provide assistance in recruitment of minority businesses.
- (5) **10 points:**  
Attending any pre-bid meetings scheduled by the public owner.
- (6) **20 points:**  
Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- (7) **15 points:**  
Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- (8) **25 points:**  
Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- (9) **20 points:**  
Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public building construction or repair project when possible.
- (10) **20 points:**  
Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.



**Town of Morrisville**  
**North Carolina**  
**Wake County**

**Affidavit B**  
**GOOD FAITH EFFORT**

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_  
 (Name of Bidder)

**I have made a good faith effort to comply under the following areas checked:**  
 (A minimum of 50 points is required to have achieved a “Good Faith Effort”)

(Y/N)

- \_\_\_ (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. **Value = 10 points.**
- \_\_\_ (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses or providing these documents to them at least 10 days before the bid or proposals are due. **Value = 10 points.**
- \_\_\_ (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. **Value = 15 points.**
- \_\_\_ (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. **Value = 10 points.**
- \_\_\_ (5) Attending any pre-bid meetings scheduled by the public owner. **Value = 10 points.**
- \_\_\_ (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. **Value = 20 points.**
- \_\_\_ (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of minority business based on lack of qualification should have the reasons documented writing. **Value = 15 points.**
- \_\_\_ (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily is required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. **Value = 25 points.**
- \_\_\_ (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. **Value = 20 points.**
- \_\_\_ (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. **Value = 20 points.**

n accordance with GS143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_



Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

ATTACH TO BID ATTACH TO BID

# Town of Morrisville

North Carolina  
Wake County

## Affidavit C

INTENT TO PERFORM CONTRACT  
WITH OWN WORKFORCE

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_  
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the  
\_\_\_\_\_ contract.  
(Name of Project)

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

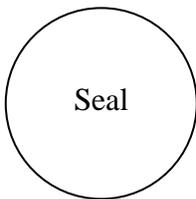
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_

**DO NOT ATTACH TO BID** **DO NOT ATTACH TO BID** **DO NOT ATTACH TO BID** **DO NOT ATTACH TO BID**

# Town of Morrisville

North Carolina  
Wake County

## Affidavit D

**PORTION OF THE WORK TO BE  
PERFORMED BY HUB FIRMS**

If the portion of the work to be executed by HUB Firms as defined in **GS 143-128.2 (g)** is **equal to or greater than 10%** of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72-hours** after notification of being low bidder.

Affidavit of: \_\_\_\_\_ I do hereby certify that on the  
(Bidder)

\_\_\_\_\_  
(Project Name)

Project ID # \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority Businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

*(Attach additional sheets if required)*

Name	Telephone Number	Minority Category	Work Description	Dollar Value

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

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

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_



Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**DO NOT ATTACH TO BID** **DO NOT ATTACH TO BID** **DO NOT ATTACH TO BID**

# Town of Morrisville

North Carolina  
Wake County

## Affidavit E GOOD FAITH EFFORTS

If the goal of **10%** participation by HUB Firms **is not** achieved, the Bidder shall provide the following documentation to the Owner of his Good Faith Efforts.

Affidavit of: \_\_\_\_\_  
(Bidder)

I do certify the attached documentation is a true and accurate representation of my good faith efforts.

*(Attach additional sheets if required)*

Name	Telephone Number	Minority Category	Work Description	Dollar Value

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

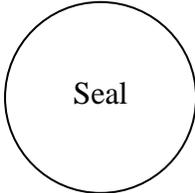
Documentation of the Bidder’s good faith efforts to meet the goals set forth in these provisions. Examples of documentation shall include the following evidence:

- a. Copies of solicitation for quotes to at least three (3) minority business firms from the source list provided for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contract, and location, date and time when quotes must be received.
- b. Copies of quotes or responses received from each firm responding to the solicitation.
- c. A telephone log of follow-up calls to each firm sent a solicitation.
- d. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- e. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- f. Copy of pre-bid roster.
- g. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- h. Letter detailing reasons for rejection of minority business due to lack of qualification.

- i. Letter documenting proposed assistance offered to minority businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_



Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**THIS DOCUMENT MUST BE SUBMITTED WITH EACH  
PAY REQUEST & FINAL PAYMENT**

# Town of Morrisville

North Carolina  
Wake County

**HUB DOCUMENTATION  
FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Pay Application #: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments to be made to HUB contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Payment Amount	Owner Use Only

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

Date: \_\_\_\_\_

Approved/Certified By: \_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

# APPENDIX D

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# Progressive Design-Build Agreement

THIS AGREEMENT IS BASED ON DESIGN-BUILD INSTITUTE OF AMERICA DOCUMENT NO. 544 BUT HAS BEEN MODIFIED FROM THE ORIGINAL FORM. DBIA CONTRACT DOCUMENTS ARE PROTECTED BY THE COPYRIGHT LAWS OF THE UNITED STATES.

This **AGREEMENT** is made as of the \_\_\_\_ day of in the year of 2025, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

**Town of Morrisville**  
100 Town Hall Drive  
Morrisville, North Carolina 27560

**DESIGN-BUILDER:**

*(Name and address)*

**PROJECT:**

The Gables at Town Hall Commons Street Improvements – Morrisville, North Carolina

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

## Article 1

### General

- 1.1 Duty to Cooperate.** Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 Definitions.** Terms, words and phrases used in this Agreement shall have the meanings given them in the General Conditions of Contract.
- 1.3 Design Services.** Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

## Article 2

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

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

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

#### **2.2 Phased Services.**

**2.2.1 Phase 1 Services.** Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in **Exhibit B**, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's compensation for Phase 1 Services is set forth in Section 7.1.1 herein. The level of completion required for Phase 1 Services is defined in **Exhibit B**, Scope of Services (either as a percentage of design completion or by defined deliverables).

**2.2.2 Phase 2 Services.** Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 2.3.

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

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

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

- i. Design-Builder's Fee as defined in Section 7.4.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2 hereof; and
- iii. If applicable, any prices established under Section 7.1.3 hereof;

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

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

**2.3.1.4** The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

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

**2.3.1.6** If applicable, a schedule of alternate prices;

**2.3.1.7** If applicable, a schedule of unit prices;

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

**2.3.1.9** The time limit for acceptance of the Proposal.

## **2.3.2 Review and Adjustment to Proposal.**

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

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

**2.3.2.4 Failure to Accept the Proposal.** If Owner rejects the Proposal or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

i. Owner may suggest modifications to the Proposal, whereupon (A) if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.3 above and (B) if such modifications are rejected by Design-Builder, or not promptly accepted in writing by Design-Builder, the Proposal shall be deemed withdrawn and Owner will again have the options set forth in this Section 2.3.2.4; or

ii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) suspend performance of Work, or (b) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.4 within thirty (30) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed.

## **Article 3**

### **Contract Documents**

**3.1** The Contract Documents are comprised of the following:

**3.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the *General Conditions of Contract Agreement Between Owner and Design-Builder* attached hereto as **Exhibit C** ("General Conditions of Contract");

**3.1.2** The Contract Price Amendment referenced in Section 2.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 2.3 herein.

**3.1.3** This Agreement, including all exhibits (List for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment and General Conditions of Contract;

**3.1.4** The General Conditions of Contract;

**3.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

**3.1.6** **Exhibit B**, Scope of Services; and

**3.1.7** The following other documents, if any:

**Exhibit D**, Phase 1 Design & Preconstruction Fee Proposal

**Exhibit E**, Proposed Project Schedule dated

## **Article 4**

### **Interpretation and Intent**

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

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are

discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof.

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

4.4 If Owner's Project Criteria contain design specifications, then Design-Builder acknowledges that such design specifications are preliminary in nature and that the Design-Builder will need to review such specifications for accuracy, completeness, and compatibility in order to further refine and develop such specifications. Provided Design-Builder performs such review in a professional manner in accordance with generally accepted industry standards, Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications.

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

## **Article 5**

### **Ownership of Work Product**

**5.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions for assignment and licensing set forth in Sections 5.2 and 5.3 below.

**5.2 Ownership upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall assign and transfer to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product, which may be used by Owner on any other design or construction without additional compensation to the Design-Builder. Such assignment is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

**5.3 Owner's Limited License upon Termination.** If this Agreement is terminated prior to completion of the Project (or is deemed completed pursuant to Section 2.3.2.4 above), Design-Builder shall, subject to Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project; provided, however, such grant shall not be conditioned on payment if this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 the General Conditions of Contract. Such grant is in all cases conditioned on Owner's express understanding that use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

## **Article 6**

### **Contract Time**

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

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

## **6.2 Substantial Completion and Final Completion.**

**6.2.1** Substantial Completion of the entire Work shall be achieved no later than "To be determined during Phase 1, subject to proposal acceptance and contract amendment." (TBD) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

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

**See Exhibit E for Phase 1 interim milestone dates and preliminary scheduled construction completion dates**

**6.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

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

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

**6.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by "To be determined during Phase 1, subject to proposal acceptance and contract amendment." (TBD) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)*

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

## **Article 7**

### **Contract Price**

#### **7.1 Contract Price.**

**7.1.1** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \$\_\_\_\_\_ for the Phase 1 Services, as further described in Exhibit D and subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**7.1.2** For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 7 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof or in the Contract Price Amendment, or equal to the Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to any GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

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

**7.2 Lump Sum.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of (Potential Option To Be Determined) \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**7.3 Markups for Changes.** If the Contract Price established by Section 7.2 above requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

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

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

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

or

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

**7.4 Design-Builder's Fee.** To Be Determined Phase 1 and Implemented in GMP Amendment

**7.4.1** Design-Builder's Fee shall be:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), as adjusted in accordance with Section 7.4.2 below.

or

\_\_\_\_\_ percent (\_\_\_\_\_% ) of the Cost of the Work, as adjusted in accordance with Section 7.4.2 below.

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

**7.4.2.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of \_\_\_\_\_ percent (\_\_\_\_\_% ) of the

additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit \_\_\_\_\_ hereto.

**7.4.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, there shall be no additional reduction to account for Design-Builder's Fee or any other markup.

## **7.5 Cost of the Work.**

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

**7.5.1.1** Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

**7.5.1.2** Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work (which, for the purpose of avoiding doubt, excludes Design-Builder's personnel stationed at Design-Builder's principal or branch offices unless specified in Section 7.5.1.3 below).

**7.5.1.3** Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit \_\_\_\_\_ **"To be determined during Phase 1, subject to proposal acceptance and contract amendment."** and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a \_\_\_\_\_ percent (\_\_\_\_\_% ) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

**7.5.1.4** Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs: (i) are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof; and (ii) do not exceed fifty-one percent (51%) of the actual costs of such wages and salaries.

**7.5.1.5** Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants (but, in respect of Design Consultants, only to the extent the Design-Builder's Fee is not a fixed amount intended to cover all design services).

**7.5.1.6** Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

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

**7.5.1.9** Costs of removal of debris and waste from the Site.

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

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

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

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

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

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

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

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

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

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

**7.5.2.1** Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.

**7.5.2.2** Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.

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

**7.5.2.4** Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion) that are not included within Section 7.5.1.7 above, including, without limitation, costs incurred by the mistakes, inadvertence, or negligence of Design-Builder or those working by or through Design-Builder.

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

## 7.6 The Guaranteed Maximum Price.

- 7.6.1 Design-Builder guarantees that it shall not exceed the GMP of **“To be determined during Phase 1, subject to proposal acceptance and contract amendment.”** Dollars (\$**TBD**). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.
- 7.6.2 The GMP includes a Contingency in the amount of **“To be determined during Phase 1, subject to proposal acceptance and contract amendment.”** Dollars (\$**TBD**) which is available for Design-Builder’s exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

## 7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal. For the purpose of avoiding doubt, there are no guarantees that this Agreement will include any Allowance Items.

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

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

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder’s overall project management and general conditions costs, overhead

and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

7.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **Article 8**

### **Procedure for Payment**

**8.1 Payment for Phase 1 Services.** Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder:

**8.2 Contract Price Progress Payments.**

**8.2.1** Design-Builder shall submit to Owner on the Thirtieth (30th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**8.2.2** Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**8.2.3** If Design-Builder's Fee under Section 7.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

**8.3 Retainage on Progress Payments.**

**8.3.1** Owner will retain Zero percent (0.0%) of each Application for Payment during Phase I and will retain five percent (5.0%) of each Application for Payment during Phase 2.

**8.3.2** Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) one hundred fifty percent (150%) of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

**8.4 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**8.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and

for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by the Owner and Design-Builder as part of this Agreement is not subject to audit.

## **Article 9**

### **Termination for Convenience**

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

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

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

**9.1.3** The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.

**9.2** If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 5.3 hereof.

## **Article 10**

### **Representatives of the Parties**

#### **10.1 Owner's Representatives.**

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

**Brandon Zuidema, Town Manager  
100 Town Hall Drive  
Morrisville, NC 27560  
919.463.6154**

**10.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.3 of the General Conditions of Contract: *(Identify individual's name, title, address, and telephone numbers.)*

**Mark Spanioli, Town Engineer  
100 Town Hall Drive  
Morrisville, NC 27560  
919.463.6193**

**10.2 Design-Builder's Representatives.**

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

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

## **Article 11**

### **Bonds and Insurance**

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

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

"Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security for the Phase 2 Services: (i) Performance Bond, in an amount equal to one hundred percent (100%) of the Contract Price; and (ii) Labor and Material Payment Bond, in an amount equal to one hundred percent (100%) of the Contract Price. All bonds furnished by Design-Builder shall be in a form that complies with Article 3 of Chapter 44A of the North Carolina General Statutes."

## **Article 12**

### **Other Provisions**

**12.1 Other provisions, if any, are as follows:**

**12.2 Listing of Exhibits and documents incorporated herein:**

[Signature Page Follows]

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

**OWNER:**

TOWN OF MORRISVILLE  
*(Name of Owner)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Town Finance Officer

## Exhibit C

### **GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

THESE GENERAL CONDITIONS ARE BASED ON DESIGN-BUILD INSTITUTE OF AMERICA DOCUMENT NO. 535 BUT HAVE BEEN MODIFIED FROM THE ORIGINAL FORM. DBIA CONTRACT DOCUMENTS ARE PROTECTED BY THE COPYRIGHT LAWS OF THE UNITED STATES.

## **Article 1**

### **General**

#### **1.1 Mutual Obligations**

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

#### **1.2 Basic Definitions**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under a modified version of DBIA Document No. 544, *Progressive Design-Build Agreement* (2019 Edition).

**1.2.2** *Basis of Design Documents* means the documents used to establish the GMP or Lump Sum, as the case may be, that are specifically listed in the Contract Price Amendment.

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

**1.2.4** *Contract Price Amendment* means that amendment referenced in Section 2.3.2.3 of the Agreement.

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

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

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

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

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

**1.2.10** *General Conditions of Contract* refer to this modified version of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2024 Edition).

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

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

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

**1.2.14** *Proposal* means the proposal accepted by Owner in accordance with Section 2.3 of the Agreement.

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

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

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

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

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

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

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

**2.1.2** Weekly meetings shall be held at which Design-Builder shall provide Owner with a status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Agreement; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

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

**2.1.4** Within seven (7) days after execution of the Agreement, the initial weekly meeting contemplated by Section 2.1.2 hereof will be held, at which meeting the parties shall discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

#### **2.2 Design Professional Services.**

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

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** Design-Builder warrants to Owner that all design professional services performed to execute the Work will be provided in accordance with the terms of the Contract Documents and will, at a minimum, conform to the standard of care required of members of the design profession practicing under similar conditions at the same time and locality of the Project. Owner's review or approval of any plans, specifications, or other instruments of professional service shall not constitute a waiver by Owner of any of Design-Builder's warranties or obligations under this paragraph.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1., shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

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

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

## **2.5 Legal Requirements.**

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

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

## **2.6 Government Approvals and Permits.**

**2.6.1** Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

## **2.7 Design-Builder's Construction Phase Services.**

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

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

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

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

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

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

## **2.8 Design-Builder's Responsibility for Project Safety.**

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

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

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

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner by persons other than the Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** In addition to Design-Builder's obligations under Section 2.9 above, Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Final Completion of the Work, or within such longer period to the extent required by any specific warranty included in the contract Documents.

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

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

## **Article 3**

### **Owner's Services and Responsibilities**

#### **3.1 Duty to Cooperate**

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

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

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

#### **3.2 Furnishing of Information and Necessary Agreements.**

**3.2.1** Owner will use reasonable efforts to, in a timely manner, respond to Design-Builder's requests for information and other inputs from Owner (of any nature to the extent related to the Work) to permit Design-Builder to fulfill its obligations under the Contract Documents. In connection therewith, Design Builder acknowledges that: (a) such information and inputs, including, without limitation, any appraisals, feasibility studies, soil tests and reports, compaction tests, environmental tests and reports, engineering studies, inspection reports, or other diligence materials, are furnished without representations or warranties of any kind, including any assurances as to accuracy, completeness, or fitness thereof for any particular purpose; and (b) Design Builder should not rely on such information and inputs in connection with its performance hereunder without taking such steps to verify, validate, or otherwise confirm the reliability of such information and inputs as may be necessary to satisfy the standard of care provided herein.

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

### **3.3 Owner's Representative.**

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

### **3.4 Government Approvals and Permits.**

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

### **3.5 Owner's Separate Contractors.**

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

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

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

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

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

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

## **4.2 Differing Site Conditions.**

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

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

# **Article 5**

## **Insurance and Bonds**

### **5.1 Design-Builder's Insurance Requirements.**

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

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

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

be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

## **5.2 Property Insurance.**

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

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

## **5.3 Bonds and Other Performance Security.**

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

**5.3.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall appear on the list contained in the U.S. Treasury Department Circular 570 and shall be a company qualified and registered to conduct business in the state in which the Project is located.

# **Article 6**

## **Payment**

### **6.1 Schedules of Values.**

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

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

## **6.2 Monthly Progress Payments.**

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

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

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

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

## **6.3 Withholding of Payments.**

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

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

## **6.4 Right to Stop Work and Interest.**

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

## **6.5 Design-Builder's Payment Obligations.**

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on

account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.2 hereof.

## **6.6 Substantial Completion**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payments, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgement that warranties commence to run on the date of Final Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to one hundred fifty percent (150%) of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

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

## **6.7 Final Payment.**

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

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

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

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

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

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

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

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

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment an amount equal to one hundred fifty percent (150%) of the reasonable value of completion of such deficient work until such work is completed.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

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

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

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

Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

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

## **7.2 Payment Claim Indemnification.**

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

## **7.3 Design-Builder's General Indemnification.**

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

**7.3.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officer, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.3.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

# **Article 8**

## **Time**

### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 6 of the Agreement.

### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract

Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

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

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

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

**9.1.1.1** The scope of the change in the Work;

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

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

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

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

#### **9.2 Work Change Directives.**

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

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

#### **9.3 Minor Changes in the Work.**

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

## **9.4 Contract Price Adjustments.**

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

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

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

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

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

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

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

## **9.5 Emergencies.**

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

## **Article 10**

### **Contract Adjustments and Disputes**

#### **10.1 Requests for Contract Adjustments and Relief.**

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

#### **10.2 Dispute Avoidance and Resolution.**

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

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

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. The parties may use the Civil Collaborative law process, authorized by Article 53, Chapter 1 of N.C. Gen. Statutes.

#### **10.3 Litigation; Forum.**

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, may be resolved by litigation. Any action or proceeding based on such claims, disputes or controversies must be brought in the federal or state courts located in Wake County, North Carolina, and each party hereby consents to the exclusive jurisdiction of, and venue in, such courts with regard thereto.

#### **10.4 Duty to Continue Performance.**

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

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Stop Work.**

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

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

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

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

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

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

only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Prior to stopping work pursuant to Section 11.3.1 above, Design-Builder must provide Owner with written notice that Design-Builder will stop the Work unless Owner's failure to pay amounts properly due is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work until payment in full of amounts properly due.

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

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

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

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

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

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

## **11.5 Bankruptcy of Owner or Design-Builder.**

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

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

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

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

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

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

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

#### **12.2 Transmission of Electronic Data.**

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

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

include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

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

### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

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

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

## **Article 13**

### **Miscellaneous**

#### **13.1 Assignment.**

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

## **13.2 Successorship.**

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

## **13.3 Governing Law.**

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

## **13.4 Severability.**

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

## **13.5 No Waiver.**

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

## **13.6 Headings.**

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

## **13.7 Notice.**

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

## **13.8 Amendments.**

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

4915-7052-8852, v. 1

**INSURANCE EXHIBIT**

The Design Builder shall provide all insurance coverage as required by General Statutes, such as Workers' Compensation Insurance. Design Builder shall also provide insurance in the following amounts:

General Liability	Each Occurrence	\$1,000,000
	General Aggregate per Project	\$2,000,000
Employers' Liability		\$500,000
Automobile Liability		\$2,000,000
Professional Liability	Each Occurrence	\$1,000,000
	General Aggregate per project	\$2,000,000
Workers Compensation		Statutory Limits
Builders Risk	Not less than 100% of the replacement cost of leasehold improvements plus annual business interruption and extra expense coverage	\$500,000
Owners and Contractors Protective (OCP) Liability Coverage	Each Occurrence and for property damage	\$2,000,000

Except for Workers' Compensation, each insurance policy listed above, and any excess or umbrella policy carried by Design Builder with additional limits than those specified above, must name the Town as an additional insured under the policy(s). All insurance policies of Design Builder shall be endorsed to state that the policy will be primary, and will not be excess to or contributory with, any self-insurance or insurance policies carried by the Town. The insurance policy shall endeavor to provide that the policy may not be canceled without 30 days' prior written notice to the Town. Design Builder shall furnish to the Town an acceptable certificate of insurance evidencing the coverage required herein. The furnishing of acceptable evidence of required coverage should not relieve Design Builder from any liability or obligation for which it is otherwise responsible to the Town.

# APPENDIX E

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## Report of Pavement Investigation

### ***The Gables at Town Hall Commons***

*Morrisville, Wake County, North Carolina*

*F&R Project No. 66C-0001*

Prepared For:

***WithersRavenel***

*115 MacKenan Drive*

*Cary, North Carolina 27511*

Prepared By:

**Froehling & Robertson, Inc.**

*310 Hubert Street*

*Raleigh, North Carolina 27603*

*January 25, 2024*



# FROEHLING & ROBERTSON, INC.

*Engineering Stability Since 1881*

310 Hubert Street  
Raleigh, North Carolina 27603  
T 919.828.3441 | F 919.828.5751  
NC License #F-0266

January 25, 2024

Mr. Rob Holland  
Senior Project Manager – Pavement Management  
WithersRavenel  
115 MacKenan Drive  
Cary, North Carolina 27511

Re: **Report of Pavement Investigation**  
**The Gables at Town Hall Commons**  
Morrisville, North Carolina  
F&R Project No.: 66C-0001

Dear Mr. Holland:

Froehling & Robertson, Inc. (F&R) has completed the authorized pavement investigation for the referenced project. Our services were performed in general accordance with F&R's Proposal 2366-00304 Rev. 1 dated December 14, 2023. The attached report presents our understanding of the project, reviews our exploration procedures, and describes existing site and general subsurface conditions.

We have enjoyed working with you on this project. Please contact us if you have any questions regarding this report or if we may be of further service.

Sincerely,  
**FROEHLING & ROBERTSON, INC.**

Brian W. McCarthy, P.E.  
Staff Geotechnical Engineer



W. Patrick Alton, P.E.  
Transportation Services Manager



## TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1.0 PURPOSE & SCOPE OF SERVICES .....	4
2.0 PROJECT INFORMATION.....	4
3.0 EXPLORATION PROCEDURES .....	4
4.0 REGIONAL GEOLOGY & SUBSURFACE CONDITIONS .....	5
4.1 REGIONAL GEOLOGY .....	5
4.2 SUBSURFACE CONDITIONS .....	5
4.2.1 GENERAL .....	5
4.2.2 SURFICIAL MATERIALS.....	6
4.2.3 FILL AND POSSIBLE FILL SOILS .....	6
4.3 PAVEMENT PROPERTIES .....	6
4.4 SOIL MOISTURE & GROUNDWATER CONDITIONS .....	7
5.0 LIMITATIONS .....	7

### APPENDICES

#### **APPENDIX I**

Site Vicinity Map, Figure No. 1  
Boring Location Plan, Figure No. 2  
Subsurface Profile, Figure No. 3

#### **APPENDIX II**

Pavement Core Photographs  
Hand Auger Logs

#### **APPENDIX III**

GBA Document



## 1.0 PURPOSE & SCOPE OF SERVICES

The purpose of the subsurface exploration was to determine asphalt and ABC stone thicknesses at six (6) locations within The Gables at Town Hall Common development.

F&R's scope of services included the following:

- Completion of six (6) pavement cores (C-1 to C-6) with hand auger sampling;
- Preparation of Pavement Core Photographs and visual classification of the subgrade soils;
- Preparation of this data report by professional engineers.

## 2.0 PROJECT INFORMATION

The site is located between Town Hall Drive and Church Street in Morrisville, Wake County, North Carolina. More-specifically, the site consists of six (6) residential roads (Courthouse Drive, Meeting Hall Drive, Founders Walk Drive, Bell Tower Way, Mayors Place Drive and Old Corner Drive) within The Gables at Town Hall Common development (see Figure No. 1, "Site Vicinity Map" in Appendix I). The residential roads in the development are asphalt-paved with concrete curbs.

The existing ground surface of the site slopes downward from an elevation (EL) of about EL 375 feet at the Church Street entrance/exit in the north-northeast of the site to the Town Hall Drive entrance/exit in the southwest at an elevation of about EL 348 feet. The site grades generally slope downward from north-northeast to southwest.

## 3.0 EXPLORATION PROCEDURES

On January 4, 2023, F&R performed a total of six (6) cores (C-1 to C-6) through the existing asphalt at the locations shown on Figure 2 in Appendix I. The cores were taken in order to characterize the existing pavement sections and sample the underlying subgrade soils.

All of the cores were obtained with a portable coring machine and a 4-inch O.D. thin-wall diamond core barrel in conjunction with a 3-inch diameter hand-turned bucket auger. The pavement core locations were selected by members of WithersRavenel prior to mobilization, and the cores were collected and returned to F&R's office for thickness measurement. Finally, the bucket auger was utilized to sample the subgrade soils to depths ranging from 2.3 to 5.3 feet beneath the top of the existing pavement.

Following subgrade sampling, the core holes were backfilled with soil cuttings and an asphalt cold patch was placed and compacted at the surface. The core samples were labeled in the field and returned to our laboratory. Representative samples of the subgrade soils at each location were also obtained and returned to our laboratory.



## **4.0 REGIONAL GEOLOGY & SUBSURFACE CONDITIONS**

### **4.1 REGIONAL GEOLOGY**

The project site is located within the Triassic Basin of the Piedmont Physiographic Province of North Carolina. The Piedmont Province generally consists of hills and ridges that are intertwined with an established system of draws and streams. The Triassic basin is filled with sedimentary rocks (*e.g.*, Sandstone, Siltstone and Mudstone) that formed approximately 190-200 million years ago. The basin was formed when differential movement occurred along the Jonesboro Fault in this area. The differential movement resulted in a long, narrow, northeast-trending basin, which gradually filled with sediments eroded from upland areas of the surrounding topography. The sediments are thought to be several thousand feet deep and have resulted in sedimentary rock formations which are frequently encountered within 10 to 20 feet of the ground surface. The sedimentary Triassic Basin rock formations are commonly interspersed with Diabase dikes and sills that have intruded the sedimentary formations.

The residual soils which overlie the weathered rock and bedrock in this area typically consist of silty clays and sandy clays, which are often highly plastic, but become less plastic with increased depth. These clayey soils typically transition into fine sandy silts and silty sands of increasing density to the top of Partially Weathered Rock. This transitional zone termed “Partially Weathered Rock” is typically found overlying the parent bedrock. Partially Weathered Rock (PWR) is defined, for engineering purposes, as soil material exhibiting Standard Penetration Resistances in excess of 100 blows per foot (bpf). The profile of the PWR and hard rock is quite irregular and erratic, even over short, horizontal distances. It is not uncommon to encounter shallow PWR and Diabase between boring locations in unexplored areas of the project site.

### **4.2 SUBSURFACE CONDITIONS**

#### **4.2.1 General**

The subsurface conditions discussed in the following paragraphs and those shown on the attached Boring Logs represent an estimate of the subsurface conditions based on interpretation of the boring data using normally-accepted geotechnical engineering judgments. Although individual soil test borings are representative of the subsurface conditions at the boring locations on the dates shown, they are not necessarily indicative of subsurface conditions at other locations or at other times. Data from the specific soil test borings are shown on the Boring Logs presented in Appendix II of this report.

A Subsurface Profile has been prepared from the boring data to graphically illustrate the subsurface conditions encountered at the site. The subsurface profile is presented as Figure No. 3 in Appendix I. Strata breaks designated on the boring logs and subsurface profile represent approximate



boundaries between soil types. The transition from one soil type to another may be gradual or occur between soil samples. This section of the report provides a general discussion of subsurface conditions encountered within areas of proposed construction at the project site. More detailed descriptions of the subsurface conditions at the individual boring locations are presented on the boring logs provided in Appendix II.

#### **4.2.2 Surficial Materials**

Asphalt was encountered at the surface of all six (6) cores. The asphalt thickness ranged from about 3.25 to 4.50 inches with an average thickness of about 3.71 inches. Aggregate base course (ABC stone) was encountered under the asphalt in all six core locations. The ABC stone thickness ranged from about 6.50 to 8.25 inches with an average thickness of about 7.67 inches.

#### **4.2.3 Fill and Possible Fill Soils**

Fill and possible fill materials were encountered at all core locations (C-1 through C-6) below the surficial materials. It is noted that sometimes the relatively small and disturbed sample obtained in the field is insufficient to definitively describe the origin of the subsurface material. Since man-made materials, deleterious materials, or other obvious evidence of fill were not encountered in the some of the soil samples, the materials believed to be earth fill are referred to as “possible fill”. The fill and possible fill soils extended to the termination depths of the cores ranging from about 2.3 to 5.3 feet (the maximum depth explored) below top of asphalt. The fill consisted of high plasticity sandy clays and low to high plasticity sandy silts (USCS – CH, ML, and MH), and silty gravel (USCS – GM).

### **4.3 PAVEMENT PROPERTIES**

A general summary of the pavement materials encountered is included in the table below. A total of six (6) pavement cores were obtained. The asphalt pavement thicknesses from the pavement cores are based on direct measurements made of the retrieved cores. The ABC stone at all locations was estimated from inside the boreholes using tactile measurements and should only be considered approximate.



Pavement Core	Material Encountered (in.)	
	Asphalt	ABC Stone
C-1	4.50	8.00
C-2	3.50	7.50
C-3	3.50	8.00
C-4	3.25	7.75
C-5	3.25	8.25
C-6	4.25	6.50
Average Thickness	<b>3.71</b>	<b>7.67</b>

#### 4.4 SOIL MOISTURE & GROUNDWATER CONDITIONS

A majority of the soil samples were described as being in a moist condition (*i.e.*, within 3 percentage points of the estimated optimum moisture content). Wet soil conditions (greater than 3 percentage points above the estimated optimum moisture content) were encountered in in C-1 and C-2 at depths of 1.7 and 2.0 feet below the top of asphalt, respectively, and extended to depths of 4.0 feet below the top of asphalt. Zones of wet soils could be encountered in other unexplored areas of the site given the displayed distress and cracking that likely allow water infiltration into the subgrade during rain events.

While groundwater level measurements were attempted at each of the core locations, no groundwater was encountered upon the completion of drilling. As a safety measure, the test locations were backfilled with soil cuttings and topped with asphalt cold-patch immediately after groundwater measurements were attempted at each location.

It should also be noted that the groundwater levels fluctuate depending upon seasonal factors such as precipitation and temperature. As such, soil moisture and groundwater conditions at other times may vary from those described in this report. Due to the presence of relatively impervious silty and clayey soils noted on the project site, trapped or perched water conditions should be anticipated during periods of inclement weather and during seasonally-wet periods.

#### 5.0 LIMITATIONS

This report has been prepared for the exclusive use of WithersRavenel and/or their agents, for specific application to the referenced project in accordance with generally-accepted soil and geotechnical engineering practices. No other warranty, express or implied, is made. Our evaluations are based on information furnished to us, the data obtained from the subsurface exploration program, and generally-accepted geotechnical engineering practices. The evaluations do not reflect variations in subsurface conditions which could exist intermediate of the boring locations or in unexplored areas of the site.



There are important limitations to this and all geotechnical studies. Some of these limitations are discussed in the information prepared by GBA, which is included in the Appendix. We ask that you please review this information.

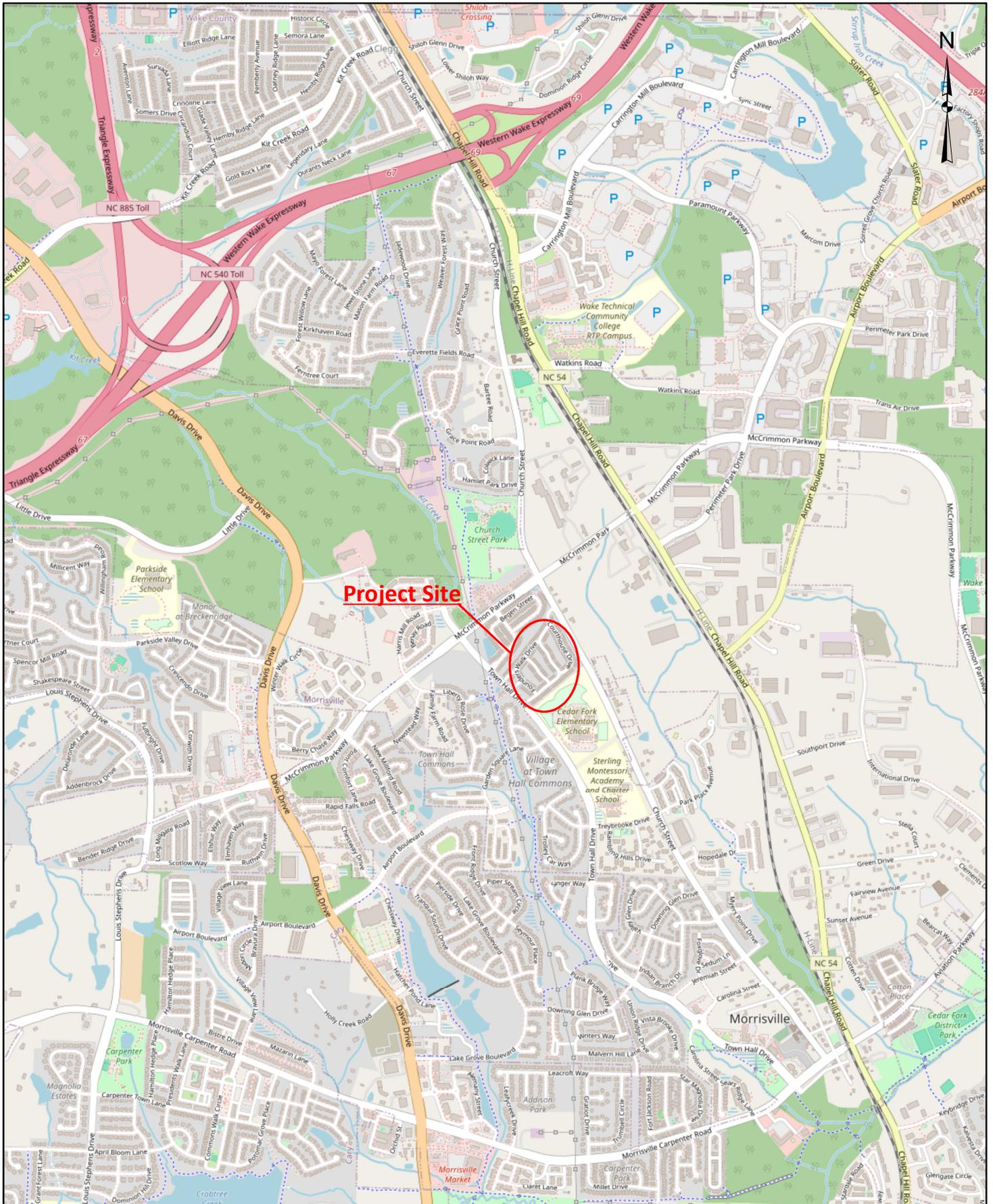
Regardless of the thoroughness of a subsurface exploration, there is the possibility that conditions between borings will differ from those at the boring locations, that conditions are not as anticipated by the designers, or that the construction process has altered the soil conditions. Therefore, experienced geotechnical engineers should evaluate earthwork, pavement, and roadway construction to observe that the conditions anticipated in design actually exist. Otherwise, we assume no responsibility for construction compliance with the design concepts, specifications, or recommendations.

If this report is copied or transmitted to a third party, it must be copied or transmitted in its entirety, including text, attachments, and enclosures. Interpretations based on only a part of this report may not be valid.



# APPENDIX I

## FIGURES

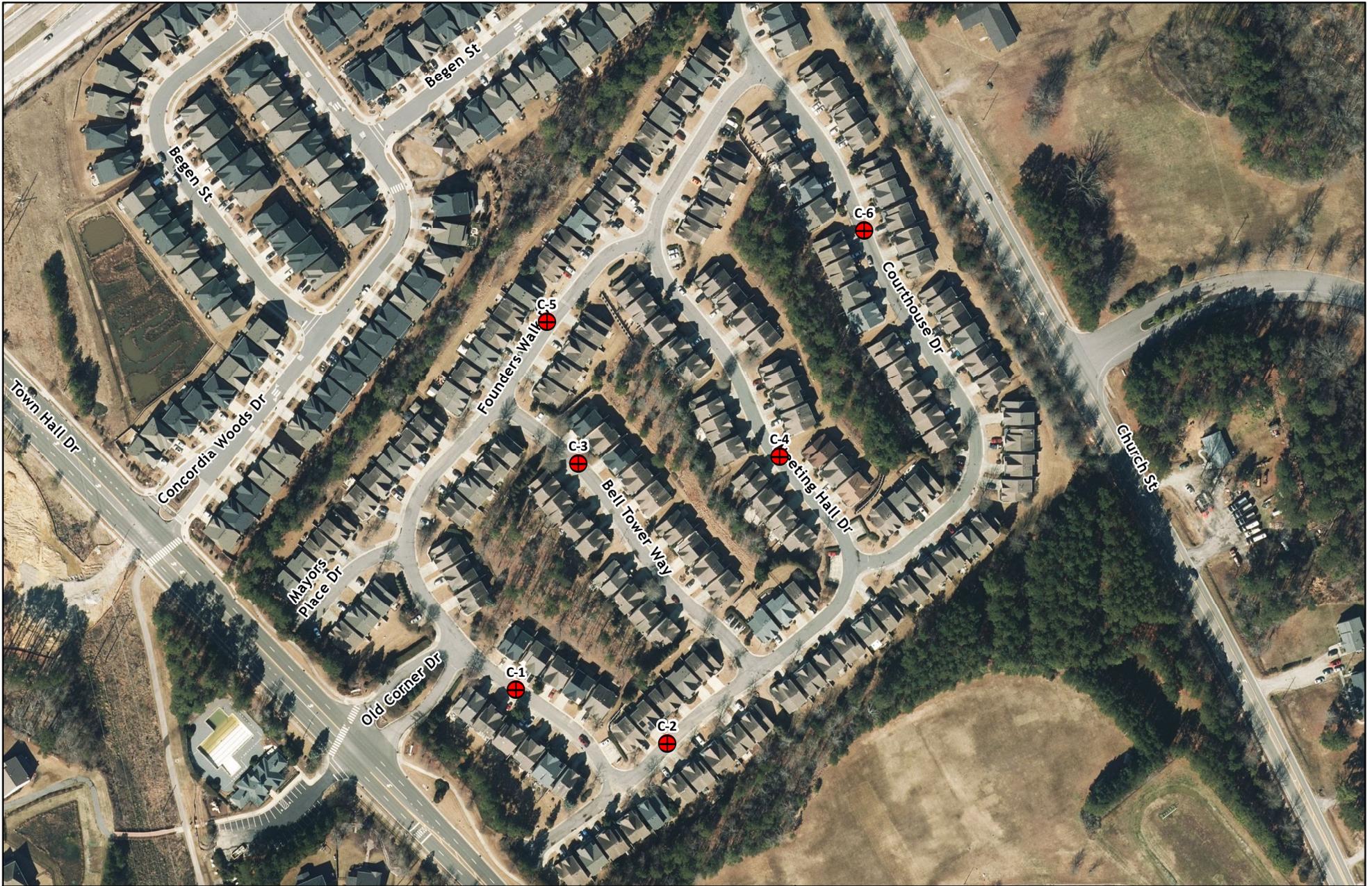


### Site Vicinity Map



310 Hubert Street  
Raleigh, North Carolina 27603  
T 919.828.3441

Client:	WithersRavenel, Inc.
Project:	Gables at Town Hall Commons
Location:	Morrisville, Wake County, NC
Project Number:	66C-0001
Date:	Open Street
Date:	January 2024
Scale:	1 inch = 2,000 feet



### Boring Location Plan



310 Hubert Street  
 Raleigh, North Carolina 27603  
 T 919.828.3441

Client:	WithersRavenel, Inc.	
Project:	Gables at Town Hall Commons	
Location:	Morrisville, Wake County, NC	
Project Number:	66C-0001	
Data:	NCOne Map Aerial 2021	
Date:	January 2024	Scale: 1 inch = 200 feet

FIGURE No.: 2



# SUBSURFACE PROFILE

Plot Based on Elevation  
Profile Name: Figure No. 3

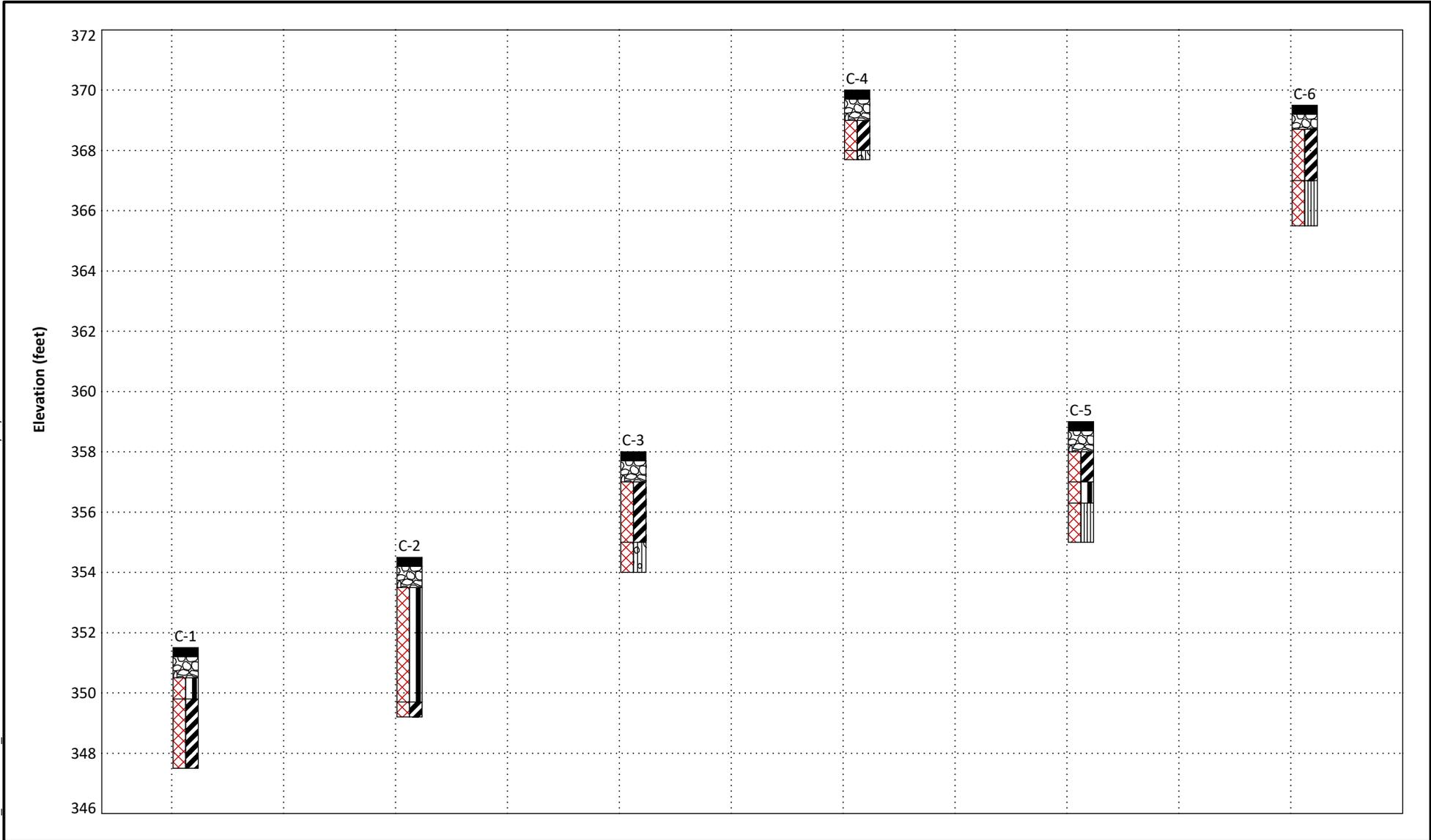
Project No: 66C-0001

Client: WithersRavenel, Inc.

Project: The Gables at Town Hall Commons

City/State: Morrisville, NC

ELEV\_LANDSCAPE\_8.5X11\_66C-0001\_HAND AUGER LOGS.GPJ F&R.GDT 1/25/24





# APPENDIX II

## RESULTS OF PAVEMENT INVESTIGATION



**PAVEMENT CORE PHOTOGRAPHS:**

**66C-0001 | WithersRavenel—The Gables at Town Hall Commons—Pavement Investigation | Morrisville, Wake Co, NC  
Core 1**

Partial Depth Crack



Partial Depth Crack





**PAVEMENT CORE PHOTOGRAPHS:**

**66C-0001 | WithersRavenel—The Gables at Town Hall Commons—Pavement Investigation | Morrisville, Wake Co, NC  
Core 2**

Full Depth Crack



Full Depth Crack





**PAVEMENT CORE PHOTOGRAPHS:**

**66C-0001 | WithersRavenel—The Gables at Town Hall Commons—Pavement Investigation | Morrisville, Wake Co, NC  
Core 3**

Full Depth Crack



Full Depth Crack





**PAVEMENT CORE PHOTOGRAPHS:**

**66C-0001 | WithersRavenel—The Gables at Town Hall Commons—Pavement Investigation | Morrisville, Wake Co, NC  
Core 4**





**PAVEMENT CORE PHOTOGRAPHS:**

**66C-0001 | WithersRavenel—The Gables at Town Hall Commons—Pavement Investigation | Morrisville, Wake Co, NC  
Core 5**

Full Depth Crack



Full Depth Crack





**PAVEMENT CORE PHOTOGRAPHS:**

**66C-0001 | WithersRavenel—The Gables at Town Hall Commons—Pavement Investigation | Morrisville, Wake Co, NC  
Core 6**

Partial Depth Crack



Partial Depth Crack





**KEY TO SOIL CLASSIFICATION**

**Correlation of Penetration Resistance with  
Relative Density and Consistency**

<b><u>Sands and Gravels</u></b>		<b><u>Silts and Clays</u></b>	
<u>No. of Blows, N</u>	<u>Relative Density</u>	<u>No. of Blows, N</u>	<u>Relative Density</u>
0 - 4	Very loose	0 - 2	Very soft
5 - 10	Loose	3 - 4	Soft
11 - 30	Medium dense	5 - 8	Firm
31 - 50	Dense	9 - 15	Stiff
Over 50	Very dense	16 - 30	Very stiff
		31 - 50	Hard
		Over 50	Very hard

**Particle Size Identification  
(Unified Classification System)**

Boulders:	Diameter exceeds 8 inches
Cobbles:	3 to 8 inches diameter
Gravel:	<b><u>Coarse</u></b> - 3/4 to 3 inches diameter <b><u>Fine</u></b> - 4.76 mm to 3/4 inch diameter
Sand:	<b><u>Coarse</u></b> - 2.0 mm to 4.76 mm diameter <b><u>Medium</u></b> - 0.42 mm to 2.0 mm diameter <b><u>Fine</u></b> - 0.074 mm to 0.42 mm diameter
Silt and Clay:	Less than 0.07 mm (particles cannot be seen with naked eye)

**Modifiers**

The modifiers provide our estimate of the amount of silt, clay or sand size particles in the soil sample.

<b><u>Approximate Content</u></b>	<b><u>Modifiers</u></b>
≤ 5%:	Trace
5% to 12%:	Slightly silty, slightly clayey, slightly sandy
12% to 30%:	Silty, clayey, sandy
30% to 50%:	Very silty, very clayey, very sandy

<b><u>Field Moisture Description</u></b>	
Saturated:	Usually liquid; very wet, usually from below the groundwater table
Wet:	Semisolid; requires drying to attain optimum moisture
Moist:	Solid; at or near optimum moisture
Dry:	Requires additional water to attain optimum moisture

**Ground Water**

▽ Water Level in Bore Hole Immediately after Drilling

▼ Static Water Level after 24 Hours



*UNIFIED SOIL CLASSIFICATION SYSTEM (USCS)*

<i>MAJOR DIVISION</i>				<i>TYPICAL NAMES</i>
<i>GRAVELS</i> More than 50% of coarse fraction larger than No. 4 sieve	<i>CLEAN GRAVEL</i> (little or no fines)		GW	Well graded gravels
			GP	Poorly graded gravels
	<i>GRAVELS with fines</i>		GM	Silty gravels
			GC	Clayey gravels
<i>SANDS</i> More than 50% of coarse fraction smaller than No. 4 sieve	<i>CLEAN SAND</i> (little or no fines)		SW	Well graded sands
			SP	Poorly graded sands
	<i>SAND with fines</i>		SM	Silty sands, sand/silt mixtures
			SC	Clayey sands, sand/clay mixtures
<i>SILTS AND CLAYS</i> Liquid Limit is less than 50			ML	Inorganic silts, sandy and clayey silts with slightly plasticity
			CL	Sandy or silty clays of low to medium plasticity
			OL	Organic silts of low plasticity
<i>SILTS AND CLAYS</i> Liquid Limit is greater than 50			MH	Inorganic silts, sandy micaceous or clayey elastic silts
			CH	Inorganic clays of high plasticity, fat clays
			OH	Organic clays of medium to high plasticity
<i>HIGHLY ORGANIC SOILS</i>			PT	Peat and other highly organic soils
<i>MISCELLANEOUS MATERIALS</i>				PWR (Partially Weathered Rock)
				Rock
				Asphalt
				ABC Stone
				Concrete
				Surficial Organic Soil



**Project No:** 66C-0001

**Elevation:** 351.5 ±

**Drilling Method:** Hand Auger

**Client:** WithersRavenel, Inc.

**Total Depth:** 4.0'

**Hammer Type:**

**Project:** The Gables at Town Hall Commons

**Boring Location:** See Hand Auger Location Plan

**Date Drilled:** 1/4/24

**City/State:** Morrisville, NC

**Driller:** W. Shenberger

Elevation	Depth	Description of Materials (Classification)	* Sample Blows	Sample Depth (feet)	Nc	Remarks
351.2	0.3	ASPHALT				
		ABC STONE				
350.5	1.0	FILL: Brown and Reddish Brown, Moist, Clayey SILT (MH), with Trace Roots and Trace Fine Gravel				
349.8	1.7	Reddish Brown, Wet, Medium to Coarse Sandy CLAY (CH), with Fine to Coarse Rock Fragments				
347.5	4.0	Hand Auger Boring Terminated at 4.0 feet.				

HAND\_AUGER\_LOG\_66C-0001\_HAND\_AUGER\_LOGS.GPJ F&R.GDT 1/25/24

\*Penetration is the number of blows required for a 15 lb hammer dropping 20" to drive 1.375" truncated rod a total of 1.75".



**Project No:** 66C-0001

**Client:** WithersRavenel, Inc.

**Project:** The Gables at Town Hall Commons

**City/State:** Morrisville, NC

**Elevation:** 354.5 ±

**Total Depth:** 5.3'

**Boring Location:** See Hand Auger Location Plan

**Drilling Method:** Hand Auger

**Hammer Type:**

**Date Drilled:** 1/4/24

**Driller:** W. Shenberger

Elevation	Depth	Description of Materials (Classification)	* Sample Blows	Sample Depth (feet)	Nc	Remarks
354.2	0.3	ASPHALT				
		ABC STONE				
353.5	1.0	FILL: Reddish Brown to Brown, Moist to Wet, Clayey SILT (MH), with Trace Gravel and Trace Roots				
		Wet (2.0'-4.0')				
349.7	4.8	Grayish Red, Moist, Silty CLAY (CH), with Trace Gravel				
349.2	5.3	Hand Auger Boring Terminated at 5.3 feet.				

HAND\_AUGER\_LOG\_66C-0001\_HAND\_AUGER\_LOGS.GPJ F&R.GDT 1/25/24

\*Penetration is the number of blows required for a 15 lb hammer dropping 20" to drive 1.375" truncated rod a total of 1.75".



**Project No:** 66C-0001

**Client:** WithersRavenel, Inc.

**Project:** The Gables at Town Hall Commons

**City/State:** Morrisville, NC

**Elevation:** 358 ±

**Total Depth:** 4.0'

**Boring Location:** See Hand Auger Location Plan

**Drilling Method:** Hand Auger

**Hammer Type:**

**Date Drilled:** 1/4/24

**Driller:** W. Shenberger

Elevation	Depth	Description of Materials (Classification)	* Sample Blows	Sample Depth (feet)	Nc	Remarks
357.7	0.3	ASPHALT				
		ABC STONE				
357.0	1.0	FILL: Reddish Brown, Moist, Silty CLAY (CH), with Trace Gravel				
		Trace Roots (2.0'-3.0')				
355.0	3.0	Reddish Brown, Moist, Silty GRAVEL (GM)				
354.0	4.0	Hand Auger Boring Terminated at 4.0 feet.				

HAND\_AUGER\_LOG\_66C-0001\_HAND\_AUGER\_LOGS.GPJ F&R.GDT 1/25/24

\*Penetration is the number of blows required for a 15 lb hammer dropping 20" to drive 1.375" truncated rod a total of 1.75".



**Project No:** 66C-0001

**Client:** WithersRavenel, Inc.

**Project:** The Gables at Town Hall Commons

**City/State:** Morrisville, NC

**Elevation:** 370 ±

**Total Depth:** 2.3'

**Boring Location:** See Hand Auger Location Plan

**Drilling Method:** Hand Auger

**Hammer Type:**

**Date Drilled:** 1/4/24

**Driller:** W. Shenberger

Elevation	Depth	Description of Materials (Classification)	* Sample Blows	Sample Depth (feet)	Nc	Remarks
369.7	0.3	ASPHALT				
		ABC STONE				
369.0	1.0	FILL: Reddish Brown, Moist, Silty CLAY (CH), with Trace Sand				
368.0	2.0	Grayish Brown, Moist, Silty GRAVEL (GM)				
367.7	2.3	Hand Auger Boring Refusal at 2.3 feet.				

HAND\_AUGER\_LOG\_66C-0001\_HAND\_AUGER\_LOGS.GPJ F&R.GDT 1/25/24

\*Penetration is the number of blows required for a 15 lb hammer dropping 20" to drive 1.375" truncated rod a total of 1.75".



**Project No:** 66C-0001

**Elevation:** 359 ±

**Drilling Method:** Hand Auger

**Client:** WithersRavenel, Inc.

**Total Depth:** 4.0'

**Hammer Type:**

**Project:** The Gables at Town Hall Commons

**Boring Location:** See Hand Auger Location Plan

**Date Drilled:** 1/4/24

**City/State:** Morrisville, NC

**Driller:** W. Shenberger

Elevation	Depth	Description of Materials (Classification)	* Sample Blows	Sample Depth (feet)	Nc	Remarks
358.7	0.3	ASPHALT				
		ABC STONE				
358.0	1.0	FILL: Light Brown, Moist, Silty CLAY (CH), with Trace Sand				
357.0	2.0	Gray, Moist, Clayey SILT (MH)				
356.3	2.7	POSSIBLE FILL: Reddish Gray Brown and Reddish Brown, Moist, SILT (ML)				
355.0	4.0	Hand Auger Boring Terminated at 4.0 feet.				

HAND\_AUGER\_LOG\_66C-0001\_HAND\_AUGER\_LOGS.GPJ F&R.GDT 1/25/24

\*Penetration is the number of blows required for a 15 lb hammer dropping 20" to drive 1.375" truncated rod a total of 1.75".



**Project No:** 66C-0001

**Elevation:** 369.5 ±

**Drilling Method:** Hand Auger

**Client:** WithersRavenel, Inc.

**Total Depth:** 4.0'

**Hammer Type:**

**Project:** The Gables at Town Hall Commons

**Boring Location:** See Hand Auger Location Plan

**Date Drilled:** 1/4/24

**City/State:** Morrisville, NC

**Driller:** W. Shenberger

Elevation	Depth	Description of Materials (Classification)	* Sample Blows	Sample Depth (feet)	Nc	Remarks
369.2	0.3	ASPHALT				
		ABC STONE				
368.7	0.8	FILL: Dark Reddish Brown, Moist, Silty CLAY (CH), with Trace Gravel				
367.0	2.5	POSSIBLE FILL: Light Reddish Brown, Moist, SILT (ML), with Trace Mica				
365.5	4.0	Hand Auger Boring Terminated at 4.0 feet.				

HAND\_AUGER\_LOG\_66C-0001\_HAND\_AUGER\_LOGS.GPJ F&R.GDT 1/25/24

\*Penetration is the number of blows required for a 15 lb hammer dropping 20" to drive 1.375" truncated rod a total of 1.75".



# APPENDIX III

## GBA DOCUMENT

# Important Information about This

# Geotechnical-Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

**The Geoprofessional Business Association (GBA) has prepared this advisory to help you – assumedly a client representative – interpret and apply this geotechnical-engineering report as effectively as possible. In that way, clients can benefit from a lowered exposure to the subsurface problems that, for decades, have been a principal cause of construction delays, cost overruns, claims, and disputes. If you have questions or want more information about any of the issues discussed below, contact your GBA-member geotechnical engineer. Active involvement in the Geoprofessional Business Association exposes geotechnical engineers to a wide array of risk-confrontation techniques that can be of genuine benefit for everyone involved with a construction project.**

## **Geotechnical-Engineering Services Are Performed for Specific Purposes, Persons, and Projects**

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical-engineering study conducted for a given civil engineer will not likely meet the needs of a civil-works constructor or even a different civil engineer. Because each geotechnical-engineering study is unique, each geotechnical-engineering report is unique, prepared *solely* for the client. *Those who rely on a geotechnical-engineering report prepared for a different client can be seriously misled.* No one except authorized client representatives should rely on this geotechnical-engineering report without first conferring with the geotechnical engineer who prepared it. *And no one – not even you – should apply this report for any purpose or project except the one originally contemplated.*

## **Read this Report in Full**

Costly problems have occurred because those relying on a geotechnical-engineering report did not read it *in its entirety*. Do not rely on an executive summary. Do not read selected elements only. *Read this report in full.*

## **You Need to Inform Your Geotechnical Engineer about Change**

Your geotechnical engineer considered unique, project-specific factors when designing the study behind this report and developing the confirmation-dependent recommendations the report conveys. A few typical factors include:

- the client's goals, objectives, budget, schedule, and risk-management preferences;
- the general nature of the structure involved, its size, configuration, and performance criteria;
- the structure's location and orientation on the site; and
- other planned or existing site improvements, such as retaining walls, access roads, parking lots, and underground utilities.

Typical changes that could erode the reliability of this report include those that affect:

- the site's size or shape;
- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light-industrial plant to a refrigerated warehouse;
- the elevation, configuration, location, orientation, or weight of the proposed structure;
- the composition of the design team; or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes – even minor ones – and request an assessment of their impact. *The geotechnical engineer who prepared this report cannot accept responsibility or liability for problems that arise because the geotechnical engineer was not informed about developments the engineer otherwise would have considered.*

## **This Report May Not Be Reliable**

*Do not rely on this report* if your geotechnical engineer prepared it:

- for a different client;
- for a different project;
- for a different site (that may or may not include all or a portion of the original site); or
- before important events occurred at the site or adjacent to it; e.g., man-made events like construction or environmental remediation, or natural events like floods, droughts, earthquakes, or groundwater fluctuations.

Note, too, that it could be unwise to rely on a geotechnical-engineering report whose reliability may have been affected by the passage of time, because of factors like changed subsurface conditions; new or modified codes, standards, or regulations; or new techniques or tools. *If your geotechnical engineer has not indicated an "apply-by" date on the report, ask what it should be, and, in general, if you are the least bit uncertain about the continued reliability of this report, contact your geotechnical engineer before applying it.* A minor amount of additional testing or analysis – if any is required at all – could prevent major problems.

## **Most of the "Findings" Related in This Report Are Professional Opinions**

Before construction begins, geotechnical engineers explore a site's subsurface through various sampling and testing procedures. *Geotechnical engineers can observe actual subsurface conditions only at those specific locations where sampling and testing were performed.* The data derived from that sampling and testing were reviewed by your geotechnical engineer, who then applied professional judgment to form opinions about subsurface conditions throughout the site. Actual sitewide-subsurface conditions may differ – maybe significantly – from those indicated in this report. Confront that risk by retaining your geotechnical engineer to serve on the design team from project start to project finish, so the individual can provide informed guidance quickly, whenever needed.

## This Report's Recommendations Are Confirmation-Dependent

The recommendations included in this report – including any options or alternatives – are confirmation-dependent. In other words, *they are not final*, because the geotechnical engineer who developed them relied heavily on judgment and opinion to do so. Your geotechnical engineer can finalize the recommendations *only after observing actual subsurface conditions* revealed during construction. If through observation your geotechnical engineer confirms that the conditions assumed to exist actually do exist, the recommendations can be relied upon, assuming no other changes have occurred. *The geotechnical engineer who prepared this report cannot assume responsibility or liability for confirmation-dependent recommendations if you fail to retain that engineer to perform construction observation.*

## This Report Could Be Misinterpreted

Other design professionals' misinterpretation of geotechnical-engineering reports has resulted in costly problems. Confront that risk by having your geotechnical engineer serve as a full-time member of the design team, to:

- confer with other design-team members,
- help develop specifications,
- review pertinent elements of other design professionals' plans and specifications, and
- be on hand quickly whenever geotechnical-engineering guidance is needed.

You should also confront the risk of constructors misinterpreting this report. Do so by retaining your geotechnical engineer to participate in prebid and preconstruction conferences and to perform construction observation.

## Give Constructors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can shift unanticipated-subsurface-conditions liability to constructors by limiting the information they provide for bid preparation. To help prevent the costly, contentious problems this practice has caused, include the complete geotechnical-engineering report, along with any attachments or appendices, with your contract documents, *but be certain to note conspicuously that you've included the material for informational purposes only*. To avoid misunderstanding, you may also want to note that "informational purposes" means constructors have no right to rely on the interpretations, opinions, conclusions, or recommendations in the report, but they may rely on the factual data relative to the specific times, locations, and depths/elevations referenced. Be certain that constructors know they may learn about specific project requirements, including options selected from the report, *only* from the design drawings and specifications. Remind constructors that they may

perform their own studies if they want to, and *be sure to allow enough time* to permit them to do so. Only then might you be in a position to give constructors the information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions. Conducting prebid and preconstruction conferences can also be valuable in this respect.

## Read Responsibility Provisions Closely

Some client representatives, design professionals, and constructors do not realize that geotechnical engineering is far less exact than other engineering disciplines. That lack of understanding has nurtured unrealistic expectations that have resulted in disappointments, delays, cost overruns, claims, and disputes. To confront that risk, geotechnical engineers commonly include explanatory provisions in their reports. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely*. Ask questions. Your geotechnical engineer should respond fully and frankly.

## Geoenvironmental Concerns Are Not Covered

The personnel, equipment, and techniques used to perform an environmental study – e.g., a "phase-one" or "phase-two" environmental site assessment – differ significantly from those used to perform a geotechnical-engineering study. For that reason, a geotechnical-engineering report does not usually relate any environmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated subsurface environmental problems have led to project failures*. If you have not yet obtained your own environmental information, ask your geotechnical consultant for risk-management guidance. As a general rule, *do not rely on an environmental report prepared for a different client, site, or project, or that is more than six months old*.

## Obtain Professional Assistance to Deal with Moisture Infiltration and Mold

While your geotechnical engineer may have addressed groundwater, water infiltration, or similar issues in this report, none of the engineer's services were designed, conducted, or intended to prevent uncontrolled migration of moisture – including water vapor – from the soil through building slabs and walls and into the building interior, where it can cause mold growth and material-performance deficiencies. Accordingly, *proper implementation of the geotechnical engineer's recommendations will not of itself be sufficient to prevent moisture infiltration*. Confront the risk of moisture infiltration by including building-envelope or mold specialists on the design team. *Geotechnical engineers are not building-envelope or mold specialists*.



Telephone: 301/565-2733

e-mail: [info@geoprofessional.org](mailto:info@geoprofessional.org) [www.geoprofessional.org](http://www.geoprofessional.org)



# APPENDIX F

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**To:** Kitty Thomas, EI  
**From:** Brad Gagnon, EI  
**cc:** Ben Mills, PE, Mark Spanioli, PE, Eric Pearson, PE.  
**Date:** September 22, 2025

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**Re:** The Gables at Townhall Commons Stormwater Infrastructure Inspection

Kitty,

The Stormwater team as well as our engineering techs spent two days visually inspecting the stormwater infrastructure contained within the Gables at Townhall Commons community in preparation for the upcoming infrastructure improvements you are planning with your team. Overall, this system is functioning as designed, but there are a few items we found during our inspections that could use some attention while there are contractors mobilized, and the residents are amenable to construction noise.

UP ST	Pipe	DWN ST	Issue	Figure
CI #46	15" RCP	CI #44	Approximately 24' downstream of CI #46, joint has separated and sediment is making it into the pipe. In public drainage easement.	1
CI #34	36" RCP	CI #52	Pipe is filled with 2-6" of sediment and stone. Public ROW.	3
YI #2	36" RCP	MH #2	Pipe has multiple misaligned joints sitting approximately 50% full. Risk for future sink holes is high. Sitting in Public Drainage Easement	N/A

*Table 1: Found Stormwater Pipe Issues*

As far as the stormwater department is aware, the only pipe needing to be addressed as part the Gables road resurfacing/reconstruction is from Figure 1: Misaligned 15" RCP joint between 200 & 202 Meeting Hall Dr. This misalignment is a threat to the new curb the Town will be placing as well as a potential safety issue. This pipe is located within an already existing public drainage easement, and the Town should not have to get any additional easements to complete this fix.

While there is only one pipe that should be replaced, our inspectors found six curb inlets in need of some type of refurbishment. Their status and proposed fixes can be found in Table 2: Curb Inlets Requiring Maintenance. They mainly consist of some cleaning and sealing, but there are a number that will require brick/frame adjustment prior to the placing of new asphalt. Thankfully these are not labor intensive and can likely be performed while construction crews are milling.



Figure 1: Misaligned 15" RCP joint between 200 & 202 Meeting Hall Dr.

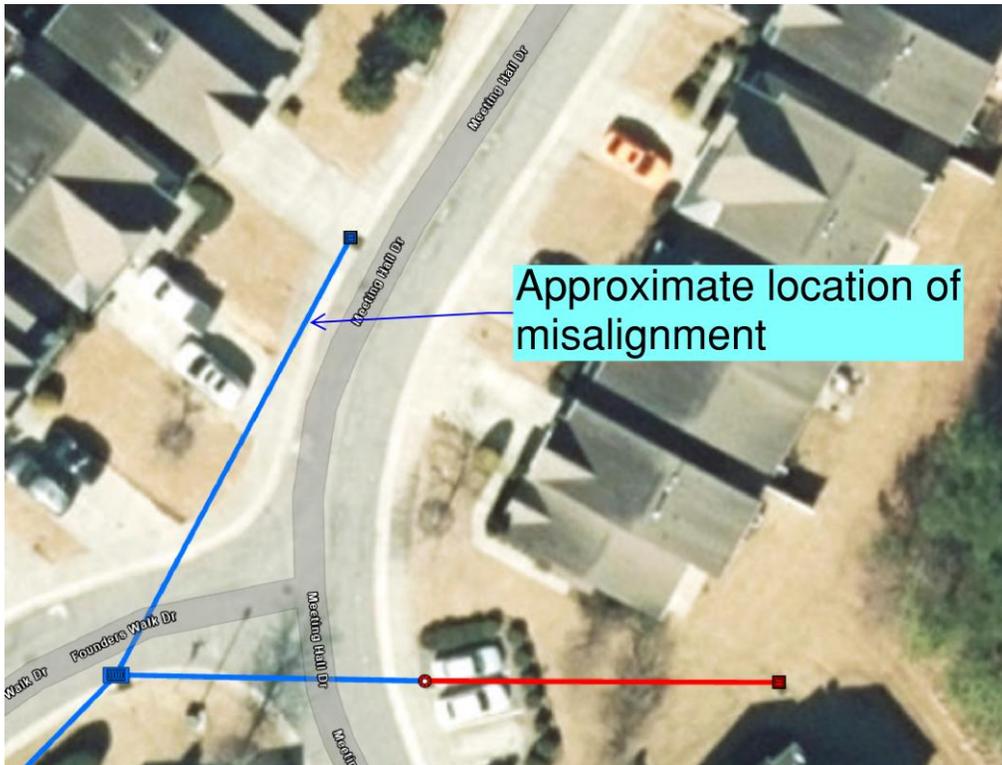


Figure 2: Location of misalignment

Inlet	Issue	Solution	Figure
CI #6	Crack between west facing pipe and inlet. Allowing a lot of infiltration.	Clean and Seal	6
CI #16	Wall needs top brick of wall replaced.	Replace brick and seal	7
CI #94	Cracks where pipe meets structure allowing infiltration. Iron buildup shows likely groundwater.	Clean and Seal	8,9
CI #14	Hood bolts not secure and frame is misaligned	Secure hood with bolts in frame and align with curb.	N/A
CI #92	Infiltration where top of structure meets walls. Brick from wall has also popped out and needs repair.	Repair brick and frame then seal	10, 11
CI # 34	Seepage at back of box; cracks along pipe opening	Clean and Seal	12

Table 2: Curb Inlets Requiring Maintenance

The system inspections did find some other issues the department would like to have addressed if possible. Figure 3 shows an existing 36” RCP is filled with sediment and stone. At its current level, it isn’t a large detriment to the system, but there’s a high likelihood construction operations knock sediment and debris into the system even with proper silt bags installed. We recommend this section of pipe be cleared after construction operations have ceased.



Figure 3: 36" RCP with sediment and stone accumulation

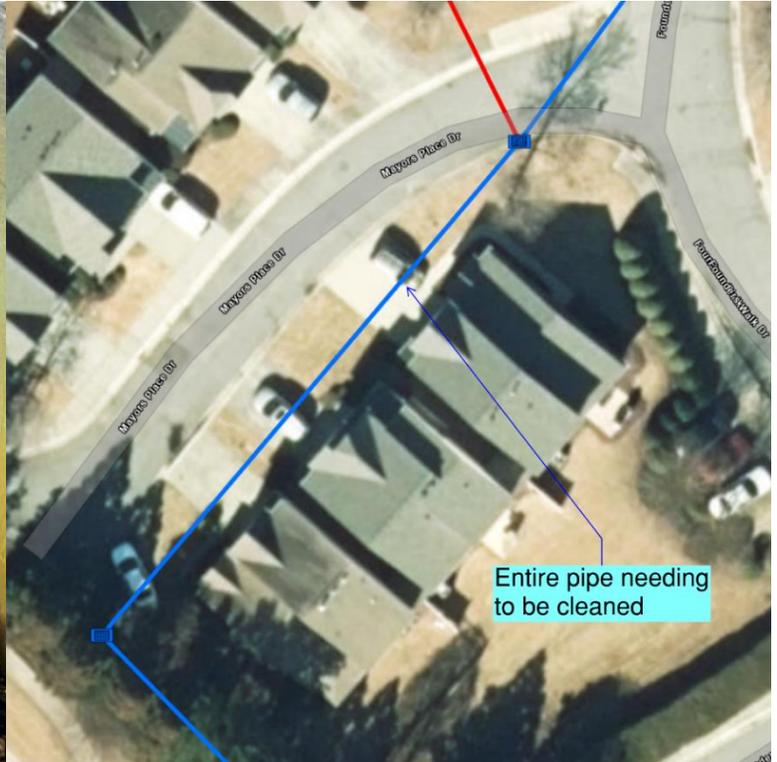


Figure 4: Location of pipe in Figure 3

Another issue discovered pertains to the 36” RCP running from YI #2 to MH #2. When on-site, field inspectors attempted to assess this pipe run with their pipe robot with a camera, but the level of water was much too deep for their robot to traverse. The inspectors looked at the pipe from the upstream and downstream structures, and it became apparent that along with misalignments,

there was a considerable belly in the pipe. While this pipe does not have any bearing on the repaving and replacement of the road structure for this neighborhood, it would behoove the Town to consider addressing this issue while we're in the area. These pipes are also located in a public drainage easement, so the Town will not need to get any extra agreements to address the issue.



Figure 5: 36" RCP Run with multiple misalignments



Figure 6: Infiltration at joints



Figure 7: Top brick row in need of replacement



Figure 8: Sign of groundwater infiltration



Figure 9: Potential infiltration

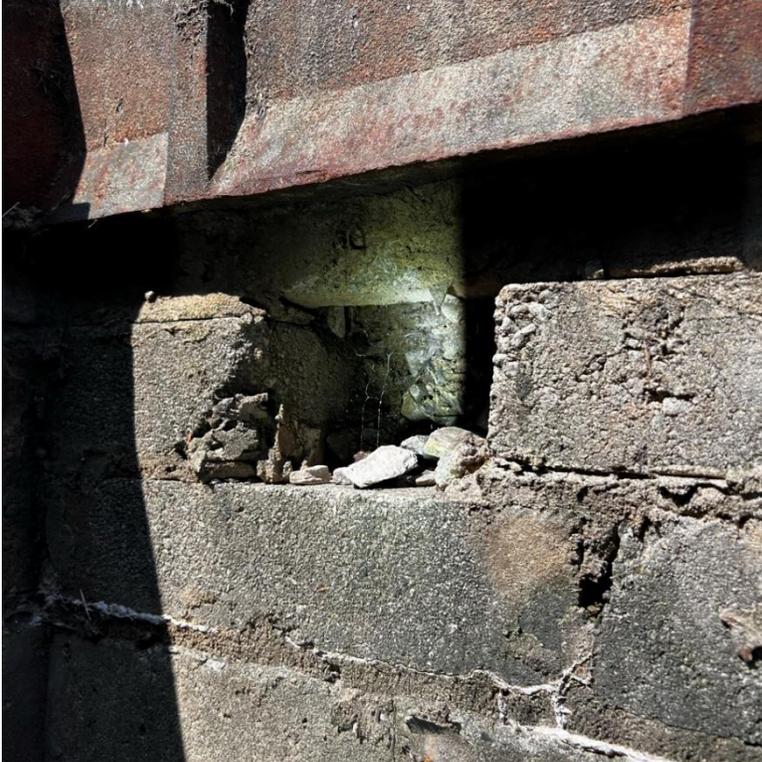


Figure 10: Brick has popped from wall



Figure 11: Infiltration



*Figure 12: Crack in structure allowing groundwater infiltration*